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Supreme Court of the United States

OCTOBER TERM, 1944

No. 588

ALABAMA STATE FEDERATION OF LABOR, LOCAL UNION NO. 103 UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AMERICAN FEDERATION OF LABOR, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA and B. E. JONES, *Petitioners,*

vs.

ROBERT E. McADORY, as Solicitor of Jefferson County, Alabama, and HOLT McDOWELL, as Sheriff of Jefferson County, Alabama.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF FOR THE PETITIONERS

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF FOR THE PETITIONERS

The Opinion of the Court Below

The opinion of the Supreme Court of Alabama is reported in 18 Southern (2d) 810, Adv. Sheets, application for rehearing denied by the Alabama Supreme Court on June 22, 1944. A copy of such opinion is appended to the Petition for Writ of Certiorari filed herein as Exhibit "B" and appears in the Record herein at page 321.

Statement as to Jurisdiction

This case is one over which the Court has jurisdiction under the provisions of the Act of Congress of February 13, 1935, Section 237-b, 28 U.S.C.A., Section 344-b.

This case is one in which the validity of Sections 7, 15 and 16 of the so-called "Bradford Act" (Alabama Acts 1943, p. 253) is drawn in question upon the ground that such sections on their face and as construed in the opinion and judgment of the Supreme Court of Alabama are repugnant to the Constitution of the United States, and in particular to the Fourteenth Amendment thereto and to the First Amendment thereto. The decision of the Alabama Supreme Court was in favor of the validity of the sections in question. The case was finally disposed of by the courts of Alabama when the Supreme Court of that State on June 22, 1944, entered its order denying application for rehearing. Every possible remedy within the State has been exhausted. The Federal questions as designated in the "Specification of Assigned Errors," infra, were raised at every possible stage in the proceedings below. Thus, the complaint challenged each of the sections as being in violation of the Federal Constitution; the assignments and cross-assignments of error raised such questions; the Federal questions were briefed and argued before the State Supreme Court, and the State Supreme Court passed upon the Federal questions in its opinion. Finally, the application for rehearing again raised the Federal questions.

On September 22, 1944, Mr. Justice Hugo L. Black issued an order extending the time within which to file a petition for writ of certiorari to October 12, 1944. A petition was filed prior to such date, and on November 20, 1944, this Court granted the writ.

Statement of the Case

This case involves an action for a declaratory judgment commenced by petitioners as plaintiffs in a suit filed pursuant to the Alabama Declaratory Judgments Statute (Title 7, Secs. 156-168, Code of 1940) in which it was sought to have declared as unconstitutional certain sections of what is commonly referred to as the Bradford Act (Act of 1943, p. 253), regulating labor organizations and their members, as such sections were threatened to be applied to the plaintiffs.

The Bradford Act was passed by the Alabama Legislature in 1943, and became effective upon its approval by the Governor of Alabama on June 29, 1943. (A copy of the Act is appended to the Petition for Writ of Certiorari filed herein as Exhibit "A".) The Act is a comprehensive enactment dealing with labor. It establishes a Department of Labor and sets up mediation machinery; it seeks to license the functioning of labor organizations by requiring the filing of various reports and financial statements and the payment of annual fees; it regulates the internal affairs and activities of labor organizations; and it regulates various aspects of picketing, boycotting and striking. Civil and criminal liabilities are imposed for violations of the provisions of the Act. Only three sections of the Bradford Act (Secs. 7, 15 and 16) are involved under this appeal; the remaining sections of the Act were either held to be unconstitutional by the Alabama Supreme Court, or their validity was not challenged.

Section 7 prohibits labor organizations from "functioning" in the State of Alabama, except upon the compliance with certain conditions, among which are the filing of copies of constitutions and by-laws of local and international organizations; the payment of an annual fee; and the filing of an annual report containing the name and address of

the organization, the names of its principal officers together with the total remuneration received by each officer, the date of election of such officers, the number of paid up members, a complete and detailed financial statement of all fees, dues and other receipts, together with a list of all disbursements with names of recipients and purposes therefor, and a complete statement of all assets owned by the organization.

Section 15 makes it unlawful for any labor organization or member or officer thereof to demand, collect or receive, directly or indirectly, from any person any sum of money (other than initiation fees or dues) "as a work permit or as a condition for the privilege to work".

Section 16 makes it unlawful for "any executive, administrative, professional, or supervisory employee" to become a member of or to be accepted into membership by any labor organization if such organization permits membership to employees other than those above named.

The petitioners (plaintiffs below) are the Alabama State Federation of Labor; the American Federation of Labor, the United Brotherhood of Carpenters and Joiners of America, Local No. 103 of such organization, and B. E. Jones, a member and officer of said Local No. 103 who is also an employee employed in an administrative or supervisory capacity (R. 2). The plaintiff labor organizations brought the action on their own behalf, as well as on behalf of their members located in the State of Alabama (R. 9, 10).

The defendants are Robert E. McAdory, Solicitor of Jefferson County; Holt McDowell, Sheriff of Jefferson County; and William McQueen, Acting Attorney General of the State of Alabama, state officials charged with enforcement of the Bradford Act (R. 18).

The complaint for declaratory judgment, in so far as relevant to the prayer that Sections 7, 15 and 16 be adjudged unconstitutional and void, alleged that Sections 7 and 16

imposed previous general restraints and prohibitions upon the exercise by plaintiffs of their civil rights of assembly and speech; that Sections 7, 15 and 16 constituted an arbitrary and unreasonable exercise of the state police power, depriving plaintiffs of the rights of liberty and property protected under the Fourteenth Amendment; that Sections 7, 15 and 16 were discriminatory as to plaintiffs and in violation of the equal protection of the laws clause of the Fourteenth Amendment; that Sections 15 and 16 were so vague and indefinite as to violate the due process of law clause of the Fourteenth Amendment; that Sections 7 and 16 violated Article IV of the United States Constitution providing that the Constitution and Laws of the United States shall be the supreme law of the land, in that such sections deprive of rights granted and guaranteed under the National Labor Relations Act; and that Section 15 violated Article I, Section 10, of the United States Constitution, providing that no State shall make laws impairing the obligations of contracts, in so far as such section made illegal various provisions contained in existing constitutions and by-laws of plaintiff organizations. The complaint alleged specifically the manner in which plaintiffs were deprived of the various constitutional rights asserted, and prayed for an adjudication that Sections 7, 15 and 16, among others, be declared unconstitutional, null and void (R. 2-24).

After certain preliminary motions were disposed of, the case went on for trial before three judges of the Circuit Court of Jefferson County. To obviate the taking of testimony, the parties stipulated as to the bulk of the factual matters alleged in the petition, and, in addition, affidavits by William Green (President of the American Federation of Labor), W. O. Hare (Secretary-Treasurer of the Alabama State Federation of Labor), and Sam Roper (President of the Alabama State Federation of Labor), setting forth certain facts in respect to the operation and function-

ing of labor organizations generally and in the State, were offered in evidence, with the agreement that each affiant would testify to the matters set out in his affidavit if he were sworn and examined in open court (R. 226). In addition, certain other witnesses were examined. Thus, either by stipulation of facts or the introduction of uncontradicted evidence there was competently proved: plaintiffs' interest in the proceeding, their controversy with the defendants, and their standing to raise the constitutional issues; the manner in which labor organizations functioned and operated, with particular reference to the activities and functioning of unions and their members as concomitants of the rights of assembly and speech; the manner in which plaintiffs were aggrieved by reason of the threatened enforcement of the various sections of the Act challenged as unconstitutional; the lack of a rational basis for the particular sections and their effect as a practical matter upon the ordinary functioning of labor organizations; and the manner in which such sections were discriminatory.

The Circuit Court held certain sections of the Act to be constitutional, among them being Section 7, held certain other sections to be unconstitutional, and refused to pass upon Sections 15 and 16 (R. 221). The judgment of the Circuit Court was appealed to the Supreme Court of the State upon assignments and cross-assignments of error, in which the constitutional issues were once again raised (R. 318-319). After hearing argument, the Supreme Court, on May 25, 1944, in a 4 to 2 decision, sustained the judgment of the Circuit Court and, in addition, declared that Sections 15 and 16 of the Bradford Act were constitutional. In its decision the Court resolved all procedural and jurisdictional questions in favor of petitioners and held that they had a standing to obtain an adjudication under the Alabama Declaratory Judgments Act concerning the constitutionality of Sections 7, 15 and 16 among others. Application for re-

hearing was made by both parties, which application was denied on June 22, 1944 (R. 360).

Specification of Errors

The Supreme Court of Alabama erred in the following respects:

1. In holding that Sections 7 and 16 of the Bradford Act do not impose a previous general restraint on or constitute a denial of the exercise by petitioners of their civil rights of assemblage and speech in violation of the First and Fourteenth Amendments to the United States Constitution.

2. In holding that Sections 7, 15 and 16 do not constitute an arbitrary and unreasonable exercise of the state police power and a deprivation of petitioners' rights of liberty, property and contract protected under the Fourteenth Amendment to, and under Article I, Section 10 of, the United States Constitution.

3. In holding that Sections 7, 15 and 16 are not discriminatory and a denial to petitioners of the equal protection of the laws in violation of the Fourteenth Amendment.

4. In holding that Sections 7 and 16 do not deny petitioners rights granted and protected under the National Labor Relations Act in violation of Article VI of the United States Constitution making the Constitution and Laws of the United States the supreme law of the land.

5. In holding that Sections 15 and 16, prescribing certain crimes not known to the common law, are not so ambiguous as to deprive petitioners of due process of the law in violation of the Fourteenth Amendment to the United States Constitution.

Summary of Argument

I

The present case involves at least two cases or controversies within the meaning of such terms as used in Article III, Section 2, of the Federal Constitution. Involved in such cases or controversies are all of the Federal issues herein briefed, and the record so shows. One such case or controversy exists between petitioner Local #103, a labor organization located in Birmingham, Alabama, and the defendant law enforcement officials of the State of Alabama. Such law enforcement officials have threatened to institute criminal proceedings against such petitioner and otherwise take steps to require petitioner to comply with the requirements of Sections 7, 15 and 16 of a law of Alabama, known as the "Bradford Act." Under Section 7, such petitioner is required to make detailed financial disclosures and otherwise take steps amounting to the taking out of a license as a condition of "functioning" in Alabama in any respect whatsoever. Under Section 15, such petitioner is prohibited from receiving any sum of money (other than initiation fees or dues) as a "work permit." Such requirement interferes with existing reasonable practices set forth in its constitution and by-laws, disrupts its union shop agreements, and deprives it of a source of income. Under Section 16, such petitioner is denied the right to accept or retain in membership any administrative or supervisory employee. This will result in a severe loss of present and future membership. Such petitioner has asserted that it intends not to comply with the requirements of Sections 7, 15 and 16, alleging that such sections deprive it of rights granted under Federal laws and under the Constitution. The State law enforcement officers have threatened to enforce the Act as against Local #103. In order to resolve the controversy between

it and the State law enforcement officers and remove the peril to its rights, petitioner applied for and was granted, under the Alabama Declaratory Judgments law, a judicial declaration in respect to the constitutionality of Sections 7, 15 and 16 as such sections were threatened to be applied to it.

The second case or controversy involves petitioner B. E. Jones. Such petitioner is a citizen of the United States, a resident of Alabama, and a member and officer of Local #103, and is a so-called "supervisory" employee, being employed as a foreman. He has likewise been threatened with criminal and civil proceedings if he does not comply with Sections 7, 15 and 16. He has asserted that he does not intend to comply with such sections, because they deprive him of civil and property rights and of rights granted him under the National Labor Relations Act. As a supervisory employee, his right to continue membership in Local #103 has been threatened. As a person and citizen, his right to assemble into and speak and petition in and through a labor organization has been restrained by the requirements of Section 7. Accordingly, he joined in an application for a judicial declaration that Sections 7, 15 and 16 as threatened to be applied to him were unconstitutional.

Thus, at least in so far as concerns petitioner Local #103 and petitioner Jones, there exists a concrete case admitting of a definitive determination of the legal rights of the parties in an adversary proceeding.

II

Section 7, which forbids any labor organization to "function" in any respect in the State until certain conditions imposed by Section 7 are met, operates to previously restrain petitioner Jones in his right to meet and assemble with fellow workers in a labor organization, and in and through such labor organizations to disseminate informa-

tion and petition for redress of grievances. The association of working people in labor organizations is a concomitant of the right of speech, assembly, press and petition, and the right to form and function through labor organizations has the same standing under the Federal Constitution as the right to form and function through political or religious organizations. Consideration of the general nature and purpose of labor organizations supports the conclusion that labor organizations are essential to the functioning of democracy in an industrial society. The cases recently decided by this Court indicate clearly that the First Amendment assures the broadest tolerable exercise of assemblage, speech and press for economic purposes in and through labor organizations, as well as for political, scientific and religious ends in and through political, scientific or religious organizations. Section 7 constitutes in effect a licensing of the right of assembly and speech, but even if it be considered mere registration as a condition to the exercise of such rights, it nevertheless operates previously to restrain the exercise of rights basic to our democracy—rights freely and unconditionally granted under the Bill of Rights. Petitioners' argument does not imply that the operations of labor organizations are above regulation or beyond the law. Specific abusive conditions and practices can be and have been made criminal without impairing the exercise of the bare right of assembly and speech.

III

Sections 7, 15 and 16 also deprive of rights and liberties in violation of the due process clause of the Federal Constitution. The requirements of such sections are arbitrary and unreasonable, and without rational basis. The record discloses that there are no existing conditions or circumstances which in any way can serve to justify the im-

position of the requirements, and that the requirements will burden labor organizations out of all proportion to any possible public benefits. Traditional practices, including those long specified in existing union constitutions and by-laws have been arbitrarily outlawed. The record shows that these practices are indispensable to the proper functioning of labor organizations and, far from resulting in any harm to the public, inure to the public benefit. Public interest does not require, nor do existing conditions warrent, the imposition of the requirements in question; reasonable men, viewing the requirements in the light of the factual disclosures contained in the record, would agree that there is no rational basis for the legislation.

IV

Sections 7, 15 and 16 are applicable only to associations of workers and not to associations of employers or other associations whose impact upon the public is similar to that of labor organizations; accordingly such sections are discriminatory. In particular such sections deny petitioner Local #103 equal protection of the laws, for the reason that other classes of labor organizations (unions of railroad employees) situated similarly to petitioner have been exempt from the requirement of such sections. The exemption of labor organizations of employees subject to the Railway Labor Act is arbitrary and without basis, the Railway Labor Act accomplishing none of the purposes of and having no relevance to the objectives of the Alabama law. The record affirmatively discloses that there is no factual difference between the manner in which organizations of railroad employees function, in so far as the requirements of Sections 7, 15 and 16 are concerned and the manner in which organizations of non-railroad employees function—as a matter of fact, both such organizations are often affili-

ated with the same parent organization and operate under identical constitutions and by-laws.

V

Sections 7 and 16 deprive petitioners of rights granted under the National Labor Relations Act. Section 7, by restraining and conditioning every aspect of the "functioning" of labor organizations, conditions the right to engage in collective bargaining, as well as the right to engage in concerted activities for mutual aid and protection, although both such rights are unconditionally granted under Section 7 of the National Labor Relations Act. Section 16 denies supervisory and administrative employees the right to join labor organizations of their own choosing, and of such organizations to admit them, contrary to the specific grants of Section 7 of the National Labor Relations Act. There exists an irreconcilable conflict between the requirements of Sections 7 and 16 and the exercise of rights granted under the National Labor Relations Act. The State cannot thus condition or limit rights granted by Congress in the effectuation of a valid Federal purpose lest such purposes be frustrated.

VI

Sections 15 and 16 are so ambiguous as to deny due process of law. No definitions of the terms "work permit" or "supervisory or administrative employee" are contained in the Act; individuals and labor organizations are required to guess concerning just what practices constitute the exaction of a "work permit," or what classes of employees constitute "administrative" or "supervisory" employees. Criminal legislation phrased so vaguely that persons of reasonable intelligence would necessarily differ as to its meaning and application violates the first essential of due process.

Argument

I

THE RECORD PRESENTS SEVERAL CASES OR CONTROVERSIES, INVOLVING THE FEDERAL ISSUES RAISED HEREIN, WITHIN THE MEANING OF ARTICLE III, SECTION 2, OF THE FEDERAL CONSTITUTION.

In granting certiorari, this Court requested counsel "to discuss in their briefs and on oral argument the question whether the record presents one or more cases or controversies within the meaning of Article III, Section 2, of the Constitution, and to state the precise facts giving rise to and the issues involved in each such case or controversy, if any."

It is respectfully submitted that the record herein presents at least two cases or controversies within the meaning of Article III, Section 2, of the Federal Constitution, in which cases are involved all of the constitutional issues raised in this appeal. One such case involves petitioner Brotherhood of Carpenters, Local #103, of Birmingham, Alabama, which seeks to protect the civil rights of its members and its own property rights under the Fourteenth Amendment from threatened and imminent impairment and destruction by the acts of law enforcement officials of the State of Alabama acting pursuant to the law herein challenged. The other such case involves petitioner B. E. Jones, a citizen of the United States and a member and officer of such local, who seeks to protect his civil and property rights against such threatened destruction.

As stated in the Statement of the Case, *supra*, this case was brought by certain petitioners, among whom were Local #103 and B. E. Jones, under the Alabama Uniform

Declaratory Judgments Act (Title VII, Sections 156-168, Alabama Code of 1940)[1] to secure a judicial declaration that Sections 7, 15 and 16, among others, of an Alabama act regulating labor organizations, commonly referred to as the "Bradford Act" (Act of 1943, p. 293), was, as threatened to be applied to petitioners, invalid under various provisions of the Federal Constitution. The Alabama Supreme Court held that such petitioners were entitled to the declaratory decree under the Alabama Declaratory Judgments Act and proceeded to render such decree, declaring that Sections 7, 15 and 16, as threatened to be applied to petitioners, were not in contravention of the Federal Constitution.

The record indicates that the following minimum facts have been established, which facts, it is respectfully submitted, give rise to the issues argued and decided below and presented here, and which facts clearly indicate that several cases or controversies exist within the meaning of Article III, Section 2, of the Federal Constitution.

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[1] The pertinent provisions of the Alabama Declaratory Judgments Act read as follows:

"156. Scope. Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

"157. Power to construe, etc. Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder."

"161. When refusal proper. The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding."

Petitioner, Local Union #103 of the United Brotherhood of Carpenters & Joiners of America, is a labor organization functioning in Jefferson County, Alabama (R. 2, and stipulated as true R. 226[2]). Immediately upon passage of the Bradford Act, such petitioner (as well as other local labor unions located in Jefferson County, Alabama, represented by and through petitioner Alabama State Federation of Labor with which such local unions are affiliated (R. 2)), was confronted with the requirement that it and its members comply (1) with Section 7 of the Bradford Act requiring it to file certain statements and otherwise take steps tantamount to the taking out of a license as a condition to its functioning in any manner within the State; (2) with Section 15 making it unlawful for it to receive any sum of money (other than initiation fees or dues "as a work permit or as a condition for the privilege to work"; and (3) with Section 16 making it unlawful for it to accept into membership any executive, administrative or supervisory employee. Failure of petitioner, Local Union 103, and other local unions similarly situated to comply with these sections constituted a crime under Section 18 of the Act. Such petitioner, under its constitution and by-laws, had for many years issued so-called work permits in certain situations (R. 20-21, 70, 16-18[3]). It also took into membership supervisory

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[2] Hereafter, unless otherwise specified, any record references to pages 2 through 29 of the record, involving the allegations of the complaint, can be accepted as admitted to be true under an "Agreement as to Certain Facts" set forth at R. 226, wherein almost all of the allegations of the complaint were stipulated to obviate the taking of testimony.

[3] R. 16 contains paragraph 10 of the complaint, which alleges certain facts as to the issuance of work permits. While on the record, Section 10 of the complaint is not admitted as true under the agreement as to facts, such allegation was at all times treated and regarded as true by the parties hereto during the course of the proceedings below, and it was so regarded by the Alabama Supreme Court. Such allegation can accordingly be accepted as true by this Court. See *Brown* v. *Garrett*, 201 U. S. 184.

and administrative employees as well as non-supervisory or administrative employees (R. 12, 21). Both of these practices were alleged and admitted to be necessary for the proper conduct of its affairs (R. 21-22). Notwithstanding the criminal sanctions that might have been invoked, such petitioner declared it to be its intention not to comply with Sections 7, 15 and 16 (R. 13), such petitioner claiming that such sections violated the Federal Constitution in various respects as herein discussed (R. 7-11). It was admitted not only that it was the duty of the respondents, Robert E. McAdory, as Solicitor of Jefferson County, Alabama, and Holt McDowell, as Sheriff of Jefferson County, Alabama, to enforce Sections 7, 15 and 16 (R. 11), but that such respondents actually were preparing to and would enforce said Sections 7, 15 and 16 as against such petitioner (R. 19). In addition, the Director of the Department of Labor had addressed various communications to petitioner, notifying it (a) that if Section 7 were not complied with by February 21, 1944, immediate steps would be taken to enforce such section (R. 263), and (b) that Section 16 must be complied with immediately upon passage of the Act under threat of criminal prosecution (R. 263-4, 311). These communications had resulted in considerable disruption of such local, and loss of members and dues (R. 313).

Petitioner B. E. Jones is a citizen of the United States, a resident of the State of Alabama, and a member and officer of petitioner Local Union #103 (R. 2-4). As an individual, he, together with other members of Local #103 (on behalf of whom Local #103 is likewise appearing), upon passage of the Bradford Act was confronted with the requirement of Section 7 of the Act that certain conditions be fulfilled before he could assemble with his fellow workers for purposes of discussion, dissemination of information, and the taking of concerted action with respect to

his economic problems—that he and those thusly associated with him must, in effect, obtain a license prior to the time that they could in any respect whatsoever function in and through a labor organization. Furthermore, said petitioner Jones, as a supervisory employee (R. 11-12, 299), was confronted with criminal prosecution if he remained a member of his local union in violation of Section 16 making it unlawful for a supervisory employee to become or remain a member of a labor organization. Petitioner Jones declared it his intention not to comply with Sections 7 and 16 (R. 7, 18), stating that his civil and property rights as protected under the First and Fourteenth Amendments were infringed by said Sections 7 and 16 (R. 13, 8-11). It was admitted that it was the duty of the defendant law enforcement officials to enforce Sections 7 and 16, and that they were preparing to and would enforce Sections 7 and 16 as to plaintiff Jones (R. 19).

From the foregoing facts it is clear that an actual and substantial controversy existed and exists between petitioners, Local Union #103 and B. E. Jones, on the one hand and the respondent enforcement officials of Jefferson County on the other. Such petitioners asserted that Sections 7, 15 and 16 were unconstitutional and void, would be injurious to them if applied but had no application to them; the respondents insisted upon compliance. The relief such petitioners sought was a definitive adjudication under the State Declaratory Judgments Act of their disputed constitutional right to be free of the requirements of Sections 7, 15 and 16, requirements which, if applied, would affect petitioners immediately and adversely.

It is clear that had such petitioners alleged resulting irreparable injury, the remedy of injunction would have been available to them. *Pierce* v. *Society of Sisters*, 268 U. S. 510. The fact that the petitioners applied for relief through a modified procedure—that of declaratory judgment—in-

stead of through other and more traditional channels is immaterial. *Nashville C. & St. L. R. Co.* v. *Wallace*, 288 U. S. 249. As is indicated by that case, if the other elements of a case or controversy are present, there is no need in an action challenging the validity of State enactments, for a prayer for injunction or for allegations of threatened irreparable injury. In that case this Court took jurisdiction over an appeal from a declaration of the Supreme Court of Tennessee made under the Uniform Declaratory Judgments Act of that State, affirming the validity of a state law as against allegations that the law violated the Federal Constitution, and the facts giving rise to a case or controversy were substantially the same as they are in the present case. See also *Adams Mfg. Co.* v. *Storen*, 304 U. S. 307; *Wright* v. *Central Kentucky Natural Gas Co.*, 297 U. S. 537; *Colorado National Bank of Denver* v. *Bedford, Treasurer*, 310 U. S. 41, in each of which cases this Court considered the constitutionality of state legislation on appeal from a declaratory judgment of the highest court of the State. As to the desirability and, indeed, the preferability of adjudicating issues of the constitutionality of state statutes through the declaratory judgment procedure, see Borchard, "Declaratory Judgments", Second Edition, p. 764, et seq.

It is respectfully submitted that the dispute between Local Union #103 and B. E. Jones and the law enforcement officials of Jefferson County gives rise to and constitutes a case or controversy within the meaning of those terms as used in the Federal Constitution and as discussed at length in the case of *Aetna Life Insurance Company* v. *Haworth*, 300 U. S. 227. On the one hand, petitioners claim that they are under no obligation to comply with Sections 7, 15 and 16; that to comply would adversely affect them, and that they intend not to comply. On the other hand, defendant prosecuting officials assert that the sections do apply to peti-

tioners; that it is their duty to enforce petitioners to comply, and that they intend to and will enforce compliance by petitioners. Assuredly, there is here present "a concrete case admitting of an immediate and definitive determination of the legal rights of the parties in an adversary proceeding upon the facts alleged;" • • • "the dispute relates to legal rights and obligations;" • • • "the dispute is definitive and concrete, not hypothetical or abstract;" and there exists "a real and substantial controversy admitting of specific relief through a decree of a conclusive character." *Aetna Life Insurance Company* v. *Haworth*, *supra*.

It should be noted, in addition, that petitioners, Local #103 and B. E. Jones, raise the issues of constitutionality of Sections 7, 15 and 16 of the Bradford Act in their capacities of taxpayers of the State of Alabama, the record indicating that both such petitioners are taxpayers (R. 4), and it being alleged and admitted that large sums of the taxpayers' money would be spent in the enforcement of the law, which expenditures would be unnecessary if the law were unconstitutional (R. 19). Under the laws of Alabama a taxpayer is entitled to maintain a proceeding to enjoin or restrain the misuse of public funds by public officers in an attempt to enforce an unconstitutional statute: *Krump* v. *Bynum*, 158 Ala. 311; *Hall* v. *Bland*, 227 Ala. 64. See also *Crampton* v. *Zabriskie*, 101 U. S. 61.

Finally, it was alleged and admitted (R. 19) that it was in the public interest that the constitutionality of the Bradford Act be determined by the Alabama Court at the earliest practicable moment.

As to the standing of petitioner Local #103 to raise the various constitutional issues, it is clear that such petitioner, as an entity recognized as a person under the law (*United States* v. *White*, 322 U. S. ——, Adv. Sheets, Vol. 88, No. 16, p. 1149), is in a position to assert, as it has asserted (R. 7-12), that Sections 7, 15 and 16 constitute

an unreasonable exercise of the State police power and operate to its prejudice; that these sections deny it equal protection of the laws by reason of the exemption from the Act of railway labor unions; that these sections deprive it of due process of law by reason of their vagueness and ambiguity; that Section 15 violates the obligations of its contracts as expressed in its by-laws; and that Sections 7 and 16 deprive it of rights granted and guaranteed under the National Labor Relations Act in violation of Article I, Section 10, of the Federal Constitution.[4] In so far as petitioner, Local Union #103, alleges deprivation of rights of assembly and speech, it does so and has a standing to do so in a representative capacity, having brought the action on behalf of its individual members (R. 2, 8-10, 13). See *Voeller* v. *Neilston Warehouse Co.*, 311 U. S. 531, in which this Court, speaking through Justice Black, permitted a corporation to assert a constitutional right on behalf of the majority of its stockholders, the Court stating:

> "There is nothing unusual in such a holding; the rights of parties are habitually protected in court by those who act in a representative capacity; an executor or administrator may act for the beneficiaries of an estate; a receiver may represent the collective interests of stockholders, partners, or creditors; a lawyer may appear for his clients; and a corporation may represent the collective interests of its shareholders. In this case, in fact, the unappealed ruling of the trial judge on the attempted intervention by the majority stands as an adjudication that in those respects here material the majority had committed their interests to the corporation itself."

See also *Thomas* v. *Collins*, No. 14, October Term, 1944, decided by this Court on January 8, 1945, in which the Court

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[4] The Record (R. 236) indicates that members of Local #103 are employed by employers subject to the National Labor Relations Act.

declared that "The right either of workmen *or of unions* under these conditions to assemble and discuss their own affairs is as fully protected by the Constitution as the right of businessmen, farmers, educators, political party members or others to assemble and discuss their affairs and to enlist the support of others." (Emphasis supplied.) From this it would appear that a union in itself, at least where it is a voluntary, unincorporated association of individuals, would have a standing to assert infringement of rights of assembly and speech when such rights are denied to the membership as a whole.

In any event, the individual petitioner, B. E. Jones, as a citizen of the United States and as a member of Local Union #103, would clearly have a right to raise the civil rights issues, as he has done. As a supervisory employee and member of Local #103, petitioner Jones would have a standing to challenge the constitutionality of Section 16 as depriving him of both civil and property rights. It is true that the Alabama Supreme Court held (R. 351), in construing the effect of the last sentence of Section 16 protecting existing union insurance benefits, that "advancement to the position of superintendent would not be prohibited" to any member holding existing union insurance contract rights. Jones, however, is presently a supervisory employee, and thus the Court's construction apparently would not affect him even though he does hold an insurance contract with Local #103. In any event, Jones' right to continue as a member of Local #103 cannot be predicated upon anything as tenuous as his holding insurance benefits therein, Jones having the undoubted right to relinquish such benefits at any time. If he has a right, either under the First Amendment or under the National Labor Relations Act, to assemble with his fellow workers into a labor organization, as has been alleged, this right cannot be conditioned or

imperilled or rendered insecure by the imposing of any requirement that he continue insurance benefits, and Jones would clearly have a right to resist such attempt by the State to condition such federally granted right.

It is respectfully submitted that petitioner, Local Union #103, and petitioner, B. E. Jones, alone have a standing to raise all of the constitutional issues in this case, and that the facts as admitted or proved clearly indicate that a real and actual controversy exists between these petitioners and the defendant prosecuting officers. Accordingly, it is unnecessary to discuss the status of the other petitioners in the case. Suffice it to say that petitioners, American Federation of Labor, Alabama State Federation of Labor and the United Brotherhood of Carpenters & Joiners of America, appear primarily in a representative capacity on behalf of their affiliates and members located within the State of Alabama, whose interests are threatened by the Alabama legislation. In addition, petitioner, United Brotherhood of Carpenters & Joiners of America, asserts impairment of the obligation of its contracts by virtue of the nullification of its work permit provisions contained in its constitution (R. 20), as well as the nullification of those provisions of its constitution requiring supervisory employees in the trade to be members of the organization (R. 21) by reason of defendants' threatened acts.

II

SECTIONS 7 AND 16, RESPECTIVELY, IMPOSE A PREVIOUS GENERAL RESTRAINT ON AND PROHIBIT THE EXERCISE OF THE CIVIL RIGHTS OF ASSEMBLAGE, SPEECH AND PETITION IN VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

The first issue involved in this appeal is whether Sections 7 and 16 of the Bradford Act impair the exercise by members of petitioner Local Union #103, including petitioner Jones, of their civil rights of assembly, press, speech and petition.

A. Section 7

1. The Effect of Section 7 on the Functioning of Labor Organizations

Under Section 7, every labor organization "functioning" in Alabama is required "before doing so" to file a copy of its own and its parent organization's constitution and by-laws and, as a condition of "functioning," is required to file a detailed written report indicating, among other things, the names of all of its officers, together with the salaries and all other remuneration paid each, the date of the regular election of such officers, the number of paid up members, a complete detailed and itemized financial statement of all receipts and disbursements for the previous year's period, a complete statement of all property owned, including funds on hand or credited to the organization, and to pay an annual fee of $2.00. The Supreme Court of Alabama defined the word "function" to mean the engaging in business by a labor organization "for the promotion of the interests of its members" (R. 336), and further stated

that the filing is a prerequisite to the ability of a labor organization to function at all (R. 334).[5]

In practical effect, the State of Alabama has said to the working people of that State, including the members of petitioner, Local Union #103, and petitioner B. E. Jones, as follows: You cannot assemble with your fellow workers into labor organizations for the purpose of discussing, disseminating information concerning, and taking action on, your economic problems; you cannot hold union meetings or discussions therein; you cannot engage in collective bargaining through unions of your own creation or choosing; you cannot, through or by means of such assemblages, petition your employer or the public or your government for redress of your grievances; in short, you cannot function in any respect whatsoever as and through a labor organization unless and until you comply with certain conditions and prerequisites that the State has prescribed, namely, that you, in effect, take out a license and pay a license fee as provided by Section 7.[6] Is such a requirement consistent with the guarantees of the First Amendment, or does it constitute a previous restraint upon the exercise by working people and petitioners of their right of assemblage, speech, press and petition? If, as has recently been reaffirmed by this Court, the right of assembly, petition, press

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[5] Under the law of Alabama labor organizations failing to comply with the provisions of the Bradford Act can be enjoined from functioning. *State* v. *Bynum*, 243 Ala. 138, 9 So. (2d) 134; *Try-Me Bottling Co.* v. *State*, 235 Ala. 207, 178 So. 231; *State* v. *Ellis*, 201 Ala. 295, 78 So. 71.

[6] It is important to note the difference between the method of enforcement adopted by the Federal government in respect to the filing of financial reports by labor organizations as required by the Revenue Act of 1943, Title I, Section 117(a), 58 Stat. 36, 26 U. S. C. Sec. 54(f), and the method adopted by the State of Alabama to enforce the Bradford Act. Instead of proscribing the very functioning of labor organizations, as does the Alabama Act, the Federal Act merely imposes a penalty upon those individuals responsible for the failure to file. (53 Stat. 28, 26 U. S. C. Sec. 54 (a)(b)(d) and 53 Stat. 62, 26 U. S. C. Sec. 145.)

and speech includes such assembly, petition, speech and press for economic as well as for religious and political purposes, the answer is clear: The State, in the absence of a clear and present danger to protectable interests, cannot thus previously restrict or restrain the otherwise peaceful exercise by working people of the right to assemble into labor organizations for economic ends. *Thomas* v. *Collins*, *supra*. Before discussing this case and other cases applicable to the issues presented here, it might be well briefly to consider the general nature and purpose of labor organizations, together with their traditional manner of functioning, in order to clarify and illuminate petitioners' basic contention, that, as a practical matter, rights are exercised in and through labor organizations which it is within the intendment of the First Amendment to protect as being indispensable to the functioning of a democracy.

2. The Functioning of Labor Organizations as Involving the Exercise of Civil Rights

Like all great movements, secular or religious, the trade union movement came into existence, and continues to exist, because it constituted and constitutes an indispenable means of fulfilling a deeply-rooted human need—specifically, the need of otherwise helpless individuals to obtain a measure of security in the means of their livelihood in an industrial society. Labor organizations give substance to inner desires and aspirations that have animated every grade and class of worker since the first days of working-class history. They are in truth the symbol of a recurrent hope and faith for economic justice and industrial democracy. In *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1, this Court stated:

> "Long ago we stated the reason for labor organizations. We said that they were organized out of the necessities of the situation; that a single employee

was helpless in dealing with an employer; that he was dependent ordinarily on his daily wage for the maintenance of himself and family; that, if the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and resist arbitrary and unfair treatment; that union was essential to give laborers opportunity to deal on an equality with their employer."

Common knowledge and, more specifically, the record in this case (see in particular the testimony of William Green, President of the American Federation of Labor, (R. 244) and the testimony of W. O. Hare, Secretary-Treasurer of the Alabama State Federation of Labor, R. 227) indicate that in the first instance the formation, and thereafter the day-to-day functioning, of labor organizations, be they local, state or national in scope, comprise in substance the practical and effective exercise by the members of such organization of their rights of assembly, speech, press and petition. Thus, from the beginning there is a constant holding of meetings for the purpose of discussion of the economic problems confronting workers, a constant solicitation of new members both by paid representatives and by the ordinary membership, the constant carrying on of educational programs, the constant attempt by speech, handbill, letter or pamphlet to enlist the aid and sympathy of the public in the common struggle to protect and improve working standards, of the legislatures, both state and national, to obtain favorable or protective legislation, and the constant attempt to present requests, views and thoughts to employers through the process of collective bargaining—in general, a constant, common consultation, exchange of views, gathering and spreading of information, and dissemination of information and views to the employer, the general public and the legislatures. Assuredly, labor unions constitute assemblage, common con-

ference and action on a variety of subjects—political, legislative, economic, social, and educational, and the decisions of this Court clearly indicate that the association of working people into labor organizations involves the exercise of rights protected under the First Amendment.

3. Applicable Decisions Indicating Assembling Into and Functioning Through Labor Organizations Involves Exercise of Civil Rights

It was long ago determined by this Court that assemblage by any and all classes of persons into political organizations for purposes of taking political action was a right protected as a concomitant of the right of assemblage. *Whitney* v. *California*, 274 U. S. 357. In *Herndon* v. *Lowry*, 301 U. S. 242, the Court upheld the constitutional right "to address meetings and organize parties." *DeJonge* v. *Oregon*, 299 U. S. 353, like the *Herndon* case, turned on the right under the First Amendment of individuals to form and organize groups, to solicit membership and to engage in the general dissemination of information through the medium of those organized groups.

More recently, in *Hague* v. *C. I. O.*, 307 U. S. 496, this Court determined that the guarantee of free speech and assembly under the First Amendment extended to protection against attempts by the officers of Jersey City to prevent the labor organizations involved in that case "from holding meetings and disseminating information whether for the formation of labor organizations or for any other lawful purpose." In that case, indeed, the purpose of holding meetings in Jersey City, with which the city officials were enjoined from interfering, "was to organize labor unions in various industries in order to secure to workers the benefits of collective bargaining with respect to betterment of wages, hours of work and other terms and conditions of employment." The injunction was sustained be-

cause this right was one safeguarded under the First Amendment, protected against infringement by the State under the Fourteenth Amendment.

In *Thornhill* v. *Alabama*, 310 U. S. 88, this Court made clear that the functioning of labor organizations as the only practicable means of disseminating information concerning the nature and causes of labor disputes, and informing the public of conditions in industry, was indispensable to the proper functioning of a democracy in a modern industrial society. The Court there stated (at 102):

> "Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period."
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> . . . . . .
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> "Free discussion concerning the conditions in industry and the causes of labor disputes appears to us indispensable to the effective and intelligent use of the processes of popular government to shape the destiny of modern industrial society."
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> . . . . . .
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> "It is true that the rights of employers and employees to conduct their economic affairs and to compete with others for a share in the products of industry are subject to modification or qualification in the interests of the society in which they exist. This is but an instance of the power of the State to set the limits of permissible contest open to industrial combatants. See Mr. Justice Brandeis in 254 U. S. at 488. It does not follow that the State in dealing with the evils arising from industrial disputes may impair the effective exercise of the right to discuss freely industrial relations which are matters of public concern. A contrary conclusion could be used to support abridgment of freedom of speech and of the press concerning almost every matter of importance to society.

> "The range of activities proscribed by Section 3448, whether characterized as picketing or loitering or otherwise, embraces nearly every practicable, effective means whereby those interested—including the employes directly affected—may enlighten the public on the nature and causes of a labor dispute. The safeguarding of these means is essential to the securing of an informed and educated public opinion with respect to a matter which is of public concern."

To proscribe the very functioning of labor organizations would proscribe the only practicable means available to employees to enlighten the public on the nature and causes of labor disputes and on conditions in industry.

In his opinion in *Murdock* v. *Pennsylvania*, 319 U. S. 105, Mr. Justice Jackson stated quite explicitly that

> "In my view the First Amendment assures the broadest tolerable exercise of free speech, free press, and free assembly, not merely for religious purposes, but for political, economic, scientific, news, or informational ends as well."

Very recently, this Court, speaking through Mr. Justice Rutledge, indicated complete acquiescence in Mr. Justice Jackson's pronouncement and went on specifically to declare in respect to the right of workers to assemble, speak and petition for economic ends in and through labor organizations *(Thomas* v. *Collins, supra)*:

> "The grievances for redress of which the right of petition was insured, and with it the right of assembly, are not solely religious or political ones. And the rights of free speech and free press are not confined to any field of human interest.
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> "The idea is not sound therefore that the First Amendment's safeguards are wholly inapplicable to business or economic activity. And it does not resolve

where the line shall be drawn in a particular case merely to urge, as Texas does, that an organization for which the rights of free speech and free assembly are claimed is one 'engaged in business activities' or that the individual who leads it in exercising these rights receives compensation for doing so."

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". . . Necessarily correlative was the right of the union, its members and officials, whether residents or nonresidents of Texas and, if the latter, whether there for a single occasion or sojourning longer, to discuss with and inform the employees concerning matters involved in their choice. These rights of assembly and discussion are protected by the First Amendment."

* * * * * * * *

"Lawful public assemblies, involving no element of grave and immediate danger to an interest the state is entitled to protect, are not instruments of harm which require previous identification of the speakers. *And the right either of workmen or of unions under these conditions to assemble and discuss their own affairs is as fully protected by the Constitution as the right of businessmen, farmers, educators, political party members or others to assemble and discuss their affairs and to enlist the support of others.*" (Emphasis supplied.)

See also as to the scope of the right of assembly generally, and as including the right of workers to form and function in unions, *State* v. *Butterworth*, 104 N. J. L. 549, 142 A. 57, 58 A. L. R. 744. See also the recent case of *American Federation of Labor* v. *Reilly, et al.*, No. 15446, decided by the Supreme Court of Colorado on December 21, 1944, wherein it was determined by that Court that a requirement that labor organizations incorporate as a condition precedent to operation in the State imposes a previous general restraint upon the rights of assemblage, press,

petition and speech. See, in addition, the very illuminating articles on the scope and nature of the right of assemblage by Professors Zechariah Chafee and Harold Laski in Volumes 2 and 6 of the Encyclopedia of Social Sciences, pp. 275 and 447, respectively.

4. The Limitations on the Power of the State to Legislate Where Exercise of Civil Rights Is Involved

From what has been said concerning the general nature and function of labor organizations, and from what this Court has indicated in the cases above cited, it would appear to be beyond argument that the bare right of workers to assemble into labor organizations is to be recognized as a right which is vital to the maintenance of our democratic institutions and which finds protection under the First Amendment. Trade unions, organized out of the very necessities of the situation and comprising a movement representative of the ideals and aspirations of workers the world over, are to be considered as essential to a free society. As such, the basic right of individual workers to assemble into and function through labor organizations can depend on no sufferance or good will of any government, but must be considered as having the same high standing under the Bill of Rights as the right of persons to assemble into political organizations for political purposes, or into religious organizations for religious purposes, or into scientific organizations for scientific purposes. Accordingly, the State cannot restrict or previously restrain the exercise of this right by working people, as by the requirement of a license or by the exaction of a fee for the privilege. *Lovell* v. *Griffin* 303 U. S. 44; *Schneider* v. *State*, 308 U. S. 147; *Murdock* v. *Pennsylvania, supra; Thomas* v. *Collins, supra.*

Indeed, in the recently decided *Thomas* case it was stated by a majority of this Court that the exercise of the bare right of assembly or speech cannot be subject to any state-

imposed condition, such as, for instance, the requirement of registration for purposes of identification, a requirement which, as pointed out by the dissenting opinion, had been permitted in other cases where the right to license would have been denied. Cf. *Cox* v. *New Hampshire*, 312 U. S. 569; *Manchester* v. *Leiby*, 117 Fed. (2d) 661.

a. *The Requirements of Section 7 as Constituting the Equivalent of a License.*

However, there is here involved a requirement which far exceeds any requirement of registration; Section 7 in fact and in effect constitutes a license imposed by the State of Alabama on the exercise of civil rights, an assertion of power which all members of this Court have agreed is improper. *Schneider* v. *State, supra; Cantwell* v. *Connecticut*, 310 U. S. 296. That the requirement under Section 7 of the filing of a detailed statement by labor organizations as a condition precedent to their authority to function in the State, which statement must show the names and remunerations of officers, dates of elections, number of members, amount of assets and liabilities, including a complete financial statement of all dues, fees, fines and assessments levied, together with an itemized list of all disbursements, constitutes the equivalent of the requirement of a license, has been determined by this Court in the case of *International Text Book* v. *Pigg*, 217 U. S. 106.[1] In that case the State of Kansas had required compliance with similar pre equisites by certain types of corporations as a condition of doing

[1] It should be noted that the *Pigg* case is here cited as authority solely for the proposition that the requirements of Section 7 are tantamount to the exaction of a license. Accordingly, the attempt by the Alabama Supreme Court (R. 338) to distinguish the case on the ground that it involved a license of the right to engage in interstate commerce, rather than of the right to assemble or speak, is fallacious. Further, and in any event, the case clearly stands as authority for the proposition that no Federally granted right can be licensed by the State.

business in the State. The filing requirement involved in that case is described by the Supreme Court in words which clearly indicate its similarity to the type of statement required under the present law:

> "In the first place, it is made a condition precedent to the authority of a corporation of another state, except banking, insurance, and railroad associations, to do business in Kansas that it shall prepare, deliver and file with the Secretary of State a detailed statement, showing the amount of the authorized, paid-up par and market value of its capital stock, its assets and liabilities, a list of its stockholders, with their respective postoffice addresses and the shares held and paid for by each, and the names and postoffice addresses of the officers, trustees, or directors and managers."

Analyzing this requirement, the Court concluded that it was in effect a licensing requirement:

> "It is true that the statute does not, in terms, require the corporation of another state engaged in interstate commerce to take out what is technically a 'license' to transact its business in Kansas. But it denies all authority to do business in Kansas unless the corporation makes, delivers and files a 'statement' of the kind mentioned in Section 1283. The effect of such requirement is practically the same as if a formal license was required as a condition precedent to the right to do such business. In either case it imposes a condition upon a corporation of another state seeking to do business in Kansas, which, in the case of interstate business, is a regulation of interstate commerce and directly burden such commerce."

See also *Crutch* v. *Kentucky*, 141 U. S. 47.

An equally important restraint imposed by Section 7 upon the functioning of labor organizations is the exaction of an annual fee which, although nominal in amount, is exacted solely as a license or permit fee or fee on the

very right to function. *Murdock* v. *Pennsylvania, supra*, involved a similar tax, nominal in amount, imposed upon the exercise of constitutional rights. There, as here, the tax was in no way apportioned or in any way related to the scope of activities of the organizations involved or their realized revenues. There, as here, the tax was a flat tax "levied and collected as a condition to the pursuit of activities whose enjoyment is guaranteed by the First Amendment."

It is no defense of the statute to claim that the fee is not excessive or that the State will not deny the license on request. The assertion of the power to grant a license implies the assertion of the power to withhold it. If the State may insist that the rights of free speech, press and assembly can be exercised only on certain terms which go beyond the limits of the constitutional protection, it may insist on prohibiting the enjoyment of those rights altogether. The degree of burden is not the determining factor; it is the power which is asserted that is non-existent. *Grosjean* v. *American Press Company*, 297 U. S. 233. Even if the license might be secured for the asking, this would constitute no answer. *Thornhill* v. *Alabama, supra.*

b. *The Area of Allowable Control in Field of Civil Rights as Distinguished from Field of Commercial Activity. The Distinction Between Restraint of Civil Rights and Prevention of Abuses.*

The Supreme Court of Alabama, in upholding Section 7 as against the foregoing argument, commented as follows:

> "If we follow the argument of counsel for plaintiff to its ultimate conclusion, it is difficult to see where any effective legislation could be had concerning regulations of organizations of this character. We think the

authorities which we have herein cited clearly demonstrate that they are subject to the police power of the state, and that the contention as to the violation of the constitutional provisions of free speech and assembly invalidates any of the provisions of the Act, is untenable."

The courts of two other states, before whom the constitutionality of similar legislation had been argued, expressed a similar concern in respect to the scope of the so-called "civil rights" argument. See *Thomas* v. *Collins*, 174 S. W. (2d) 958 (Texas), and *Hill* v. *State*, decided by the Supreme Court of Florida on November 28, 1944 (C. C. H., p. 67,040). The apprehension thus expressed is not warranted. However, having been expressed by three high judicial bodies, there is perhaps a need for greater explicitness in presentation of the argument. We do not suggest that Local #103 or any other labor organization in the State of Alabama is beyond regulation or in any way "above the law." We do contend that the right of petitioner Jones and the other members of Local #103 to assemble with their fellow workers in a labor organization cannot be previously restrained—that this right has a higher standing under the Federal Constitution than the right of individuals to form or join a business corporation or similar concern conducted for commercial purposes. This is on the basis of the principle enumerated by this Court in *Murdock* v. *Pennsylvania*, *supra*:

"The constitutional rights of those spreading their religious beliefs through the spoken and printed word are not to be gauged by standards governing retailers or wholesalers of books. The right to use the press for expressing one's views is not to be measured by the protection afforded commercial handbills."

See also *Follett* v. *Town of McCormick*, 64 S. Ct. 717; *Valentine* v. *Chrestensen*, 316 U. S. 52.

Underlying all of the cases passing on the constitutionality of state interference with free speech, press or assembly is the basic distinction between the standards of constitutionality applied to legislation affecting rights related to property or to commercial enterprises and legislation related to the fundamental freedoms essential to our democracy. This distinction is best expressed in the words of this Court in *West Virginia* v. *Barnette*, 319 U. S. 624:

> "In weighing arguments of the parties it is important to distinguish between the due process clause of the Fourteenth Amendment as an instrument for transmitting the principles of the First Amendment and those cases in which it is applied for its own sake. The test of legislation which collides with the Fourteenth Amendment, because it also collides with the principles of the First, is much more definite than the test when only the Fourteenth is involved. Much of the vagueness of the due process clause disappears when the specific prohibitions of the First become its standard. The right of a state to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a 'rational basis' for adopting. But freedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds. They are susceptible of restriction to prevent grave and immediate danger to interests which the State may lawfully protect."

In *Thomas* v. *Collins*, *supra*, this Court again referred to the "preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment." The history of the trade union movement

has shown that the freedom of working persons to assemble and associate together for economic ends is as essential to our democratic process as the right of other persons to assemble into political organizations for political purposes, or into other societies for religious or scientific or educational ends. As the cases make clear, the power of the State to abridge this right cannot be judged on the same basis as is judged the power of the State to abridge the right of persons to associate together into business organizations for commercial purposes; accordingly, the analogy pointed by the Alabama Court and the Courts of Alabama, Florida and Texas to the accepted right of the State to license or otherwise condition the existence of business corporations or other forms of organized commercial activity is a false one. The formation and functioning of a meat packing company, of an ice plant, of a public utility, does not comprise, or is not a concomitant of, assemblage and speech in a domain "indispensable to the effective and intelligent use of the processes of popular government to shape the destiny of modern industrial society"; "the dissemination of information concerning the facts of a labor dispute," and "free discussion concerning the conditions in industry and the causes of labor disputes," in and through a labor organization as the only "practicable, effective means whereby those interested—including employees directly affected—may enlighten the public on the nature and causes of a labor dispute" does comprise, and is such concomitant of, assemblage and speech in such a domain. *Thornhill* v. *Alabama*, *supra*, 310 U. S. at 102, 103; *Thomas* v. *Collins*, *supra*.

Section 7, it is to be recalled, forbids under criminal penalties, except upon state-imposed conditions, each and every element of the functioning of labor organizations, including the holding of meetings and discussion and dissemina-

tion of information concerning economic problems of working people in and through such meetings:

> "If the exercise of the rights of free speech and free assembly cannot be made a crime, we do not think this can be accomplished by the device of *requiring previous registration as a condition for exercising them and making such a condition the foundation for restraining in advance their exercise and for imposing a penalty for violating such a restraining order.*" (Emphasis supplied.) (*Thomas* v. *Collins, supra.*)

Section 7, it should further be noted, has nothing to do with the prevention of abuses. Any labor organization, regardless of its purposes, manner of operation, or conduct in respect to the public, is free to function in the State if it files the statement in question.

Let us repeat, the argument advanced by petitioners in no way subordinates the right of the State to deal with whatever abuses are or may be incident to the assemblage of working people into labor unions. If there is fraud or violence or any other specific conduct inimical to the interests of the public, such conduct can, of course, be made unlawful. In so far as a union or its members engage in any activity which can properly be considered criminal, they are today subject to the provisions of the criminal law. Laws may be passed to curb specific criminal conduct but not to curb the very exercise of the right of speech or assembly. It is this consideration which constitutes one of the cornerstones of American traditions of free speech and free assemblage. As this Court has pointed out (*DeJonge* v. *Oregon*, 299 U. S. 353):

> "These rights may be abused by using speech or press or assembly in order to incite to violence and crime. The people through their legislatures may protect themselves against that abuse. But the legislative intervention can find constitutional justification only by

dealing with the abuse. The rights themselves must not be curtailed. The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government."

See also *Thomas* v. *Collins, supra.*

B. Section 16

All of the foregoing arguments made in reference to Section 7 are applicable to petitioners' contention that Section 16 is unconstitutional. Section 16, which makes it unlawful for any "executive, administrative, professional or supervisory employee to be a member in, or to be accepted for membership by, any labor organization," even more clearly operates to deny a certain class of working people their right to assemble, speak, and petition in and through labor organizations. Included in this class is petitioner Jones whom the record shows to be a supervisory or administrative employee. Whereas Section 7 might be said merely to restrain the exercise of civil rights, Section 16 constitutes an outright prohibition on the exercise of such rights.[8]

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[8] It should be noted that Section 16 prohibits any supervisory or administrative employee from being a member in any labor organization only if that organization also permits membership to employees other than supervisory or administrative employees, or if it is affiliated with any labor organization permitting membership to non-supervisory or administrative employees. However, since both the American Federation of Labor and the Congress of Industrial Organizations admit non-supervisory or administrative employees into membership, and since the vast majority of labor organizations are affiliated with one or the other of these two organizations, the choice of organization remaining to administrative or supervisory employees is so limited as to leave that choice an empty one.

As seen by one of petitioners' exhibits (R. 268) and by the testimony (R. 240), numerous labor organizations have traditionally enrolled supervisory or administrative employees into membership along with non-supervisory or administrative employees, and many classes of administrative and supervisory employees have traditionally sought and obtained membership in such labor organizations for their mutual aid and protection. The history of the labor movement clearly indicates that the need of this class of employees for the protection afforded by labor organizations is as great as that of any other class of employees. The right thus to assemble into an organization for economic ends is as inviolable as the right of other persons to assemble into organizations for religious or political purposes. The right is open to all and cannot be abridged for reasons of race, creed, color, social position or, as in the present case, hierarchy of employment. Consideration by the assemblage itself of whether the purposes of the assemblage can be accomplished by admitting certain classes of supervisory employees has in the past served to eliminate those categories whose presence in the assemblage would defeat its purposes, and in the future must necessarily continue to determine the question of exclusion or inclusion if freedom of assemblage is to have any content or any meaning. As stated in *Schneider* v. *State*, *supra:*

> "Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions."

It could hardly be asserted that the State has the right to prohibit membership in religious organizations because of political or social beliefs or in political organizations because of color. See *Nixon* v. *Herndon*, 273 U. S. 536, and

Nixon v. *Condon*, 286 U. S. 73. It is no less a denial of a right fundamental to our society to prohibit the petitioner Jones or other supervisory employees who are members of Local Union #103 from joining and assembling with their fellow workers in an organization in which they have held membership for years, and which desires to continue them in membership. Denial of this right cannot find justification in legislative beliefs as to the greater or lesser desirability that the right be exercised by certain classes of persons.

C. Conclusion

The importance of the issues above discussed cannot be overstated. The future pattern, indeed the continued existence, of the entire trade union movement as an effective instrument in dealing with and solving the problems of our present-day industrial society might well be involved. Implicit in the challenged legislation is the assertion by the State of the right to withhold or condition as it sees fit the right of individuals to assemble into and function in and through labor organizations. What Alabama has attempted under Section 7 differs only in degree from the compulsory incorporation requirements of the so called "Labor Peace Act" of the State of Colorado (Senate Bill 183, Laws of 1943) recently struck down as an invasion of the rights of speech and assembly by the Supreme Court of that State, and the Colorado Act differed only in degree from legislation completely assimilating labor organizations into a corporate state on the Fascist model. It is the great purpose and function of the Bill of Rights to safeguard "the processes of popular government, to shape the destiny of modern industrial society" (*Thornhill* v. *Alabama*, *supra*)—to safeguard such processes even as against the slightest of restraints:

> "There is some modicum of freedom of thought, speech and assembly which all citizens of the Republic may

exercise throughout its length and breadth, which no State, nor all together, nor the Nation itself, can prohibit, restrain or impede. If the restraint were smaller than it is, it is from petty tyrannies that large ones take root and grow. This fact can be no more plain than when they are imposed on the most basic rights of all. Seedlings planted in that soil grow great and, growing, break down the foundations of liberty." *(Thomas* v. *Collins, supra.)*

III

SECTIONS 7, 15 AND 16 CONSTITUTE AN ARBITRARY AND UNREASONABLE EXERCISE OF THE STATE POLICE POWER IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

A. General Considerations

Sections 7 and 16, discussed in the preceding section of this brief, and, in addition, Section 15, violate the Federal Constitution in additional respects. The requirements contained therein are arbitrary and unreasonable, and without rational basis; they deprive petitioners, in particular petitioner Local Union #103, of rights and liberties protected under the due process of law clause of the Fourteenth Amendment. We appreciate that the burden assumed in thus challenging the enactments as an unreasonable exercise of the State's police power is a heavy one. *Nebbia* v. *New York*, 291 U. S. 502. It is submitted, however, that the interference with the orderly, peaceful and traditional functionings of voluntary associations of working people accomplished by the requirements of Sections 7, 15 and 16 are disproportionately burdensome, are entirely unjustified, and serve no compelling public purpose—that reasonable men, viewing the requirements in the

light of existing circumstances, and with a knowledge of the purpose and role of labor organizations in our modern industrial society, must and would agree that the law is arbitrary in the extreme and without rational basis. If this can be said to be true, then it is the function and the duty of this Court to declare the law invalid. *Mugler* v. *Kansas*, 123 U. S. 623.

In determining whether any particular legislative enactment is lacking in rational basis, this Court is guided by somewhat less vague or inarticulate premises than the broad phrases of the Fourteenth Amendment or the indefinite tests of arbitrariness or unreasonableness. The problem is a severely practical one, dependent upon the facts and circumstances of each individual case. "Legislation cannot be judged by theoretical standards. It must be tested by the concrete conditions which induce it." McKenna, J., in *Mutual Loan Co.* v. *Martell*, 222 U. S. 225, at 233. Examination into such facts and circumstances as a means of forming a basis for adequate judgment as to reasonableness is a necessary preliminary to such judgment if the exercise by the State of its police power is not to become a bootstrap proposition. The necessity for a factual showing of a lack of need for particular legislation as a basis for adjudging whether such legislation is an unnecessary or excessive exercise of State police power has very recently been commented upon by the dissenting Justices in *Thomas* v. *Collins*, *supra*, when they stated:

> "Since its requirements are not obviously burdensome, we cannot void the statute as an unnecessary or excessive exercise of the State's police power on any *a priori* reasoning. The State Supreme Court has found that conditions exist in Texas which justify and require such identification of paid organizers as the law prescribes. There is not a word of evidence in the record to contradict these conclusions. *In the absence*

> *of a showing against the need for the statute* this court ought not incontinently to reject the State's considered views of policy." (Emphasis supplied.)

Accordingly, in determining whether any particular legislation has rational basis, this Court has made the following inquiries:

> *What is the type of activity involved—is it inherently evil, or is it dedicated to a public use as in the case of a utility, or is it a useful or socially necessary activity? Do circumstances or economic conditions exist which require the intervention of the State? Is there in fact a danger to the health, safety or well-being of members of the State in the existing situation? Will the method adopted by the State guard against it? Is the burden on the individual too heavy to justify the restriction? Are the means adopted by the State reasonably related or relevant to the objectives sought, or do they impose hardships in disproportion to the benefits which the State seeks to confer? Is it possible to secure the objects sought without impairing essential rights and principles? And finally, are the interests of the public generally, as distinguished from those of a particular class, such as to require the interference of the state?*[9]

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[9] This method of approach by inquiry into facts and circumstances and into specific economic conditions, termed "sociological jurisprudence" by Dean Pound, has been described and commented upon in important law review articles. See "Hours of Labor and Realism in Constitutional Law" by Felix Frankfurter, 29 Har. Law Rev. 353; "Judicial Determination of Questions of Fact Affecting the Constitutional Validity of Legislative Action" by Henry Wolf Bikle, 38 Har. Law Rev. 6; "Due Process of Law, Police Power and the Supreme Court" by Ray A. Brown, 40 Har. Law Rev. 943; "Police Power—Legislation for Health and Personal Safety" by Ray A. Brown, 42 Har. Law Rev. 866. See also *Nebbia v. New York, supra,* where the Court stated:

> "• • • the function of courts in the application of the Fifth and Fourteenth Amendments is *to determine in each case whether circumstances vindicate the challenged regulation as a reasonable exertion of governmental authority or condemn it as arbitrary or discriminatory.*" (291 U. S. at 536.)

What are the factual or economic circumstances which justify the attempted regulations or prohibitions contained under Sections 7, 15 and 16? In the first place, it is significant that, at least in so far as could be ascertained in the hearings herein (R. 296) or as far as the Alabama Legislature records disclose,[10] the Alabama Legislature undertook no legislative investigation under which the facts in respect to the operations of labor organizations within the State

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"It results that a regulation valid for one sort of business, or in given circumstances, may be invalid for another sort, or for the same business under other circumstances, *because the reasonableness of each regulation depends upon the relevant facts.*" (291 U. S. at 525.) (Emphasis supplied.)

See also *Muller* v. *Oregon*, 208 U. S. 412, 419-420; *McLean* v. *Arkansas*, 211 U. S. 539, 548-51; *Price* v. *Illinois*, 238 U. S. 446, 453; *Bunting* v. *Oregon*, 243 U. S. 426, 439; *Levy Leasing Co.* v. *Siegel*, 258 U. S. 242, 245, for instances of the Court's reliance upon specific circumstances and economic conditions as serving to justify the challenged legislation. Justice Brandeis, in particular, in his great dissents in cases involving economic legislation such as minimum wage laws, relied either upon legislative findings or upon sociological data to support his conclusion that the particular legislation found justification and rational basis in the existing economic circumstances and conditions. See his dissents in *Adams* v. *Tanner*, 244 U. S. 590; *J. Burns Baking Co.* v. *Bryan*, 264 U. S. 504; *Truex* v. *Corrigan*, 257 U. S. 311.

See also *Borden's Farm Products* v. *Baldwin*, 283 U. S. 194, where the Court emphasized the "importance of adequate findings of fact in relation to controlling economic conditions."

In the following cases it was held that the due process clause forbids legislation which restricts individual or group rights more severely than advantages to the community can possibly justify; *Chicago, Burlington & Quincy Railway Co.* v. *People of the State of Illinois*, 200 U. S. 561; *Caroline W. Dobbins* v. *City of Los Angeles*, 195 U. S. 223; *Henning Jacobson* v. *Commonwealth of Massachusetts*, 197 U. S. 11; *W. T. Price* v. *People of the State of Illinois*, 238 U. S. 446. In *Liggett* v. *Baldridge*, 278 U. S. 105, the Court declared that in passing upon the reasonableness of any regulation the Court must consider the degree of danger to public interest, the economic and social demands fulfilled by the activity regulated, and the possibility of accomplishing the desired result by less drastic measures.

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[10] House Journal, Alabama Legislature, Session 1943, pages 1302, 1407, 1489, 1503, 1551.

Senate Journal, Alabama Legislature, Session 1943, pages 674, 698, 871, 1066, 1271, 1294, 1683.

and their effect upon the public could be ascertained, and such Legislature made no findings of any conditions which might afford a rational basis for the various requirements imposed. In the *Nebbia* case, *supra*, and in similar cases findings of state legislative investigatory bodies were heavily relied upon by this Court in affording justification for the particular regulations. See *Wolf Packing Co.* v. *Court of Industrial Relations*, 262 U. S. 522.

In the present case the record affirmatively discloses that no particular abuses existed which reasonably would require legislative interference in respect to the matters restricted under Sections 7, 15 and 16 of the Bradford Act, and that there are no existing conditions in respect to the subject matter of the legislation which could serve to afford a rational basis for the various requirements. As will be seen, the presumption that such circumstances exist has been amply rebutted by the record herein.

B. Section 7

Thus, for instance, in regard to Section 7 the State did not and could not rely upon any existing, abusive conditions or practices in respect to union financial matters. On the contrary, the evidence affirmatively and specifically showed that unions operating in the State regularly made full financial accounting to their membership (R. 236, 238).[11] Neither

[11] It is undisputed that (R. 238)

"With respect to the income, expenditures, assets and liabilities of all labor organizations affiliated with the A. F. of L. operating in Alabama, it is the practice to make regular accountings of all such financial matters to the members, either at regular monthly meetings or by quarterly audit of the books and records by duly elected trustees or by auditing committees. That a number of such organizations regularly publish financial statements. That in cases where such statements are not published, such statements are orally read at regular meetings or are prepared by a duly elected auditing committee. That

did the State rely upon or claim any monopoly upon the supply of labor by labor organizations within the State as a justification for the public filing of financial statements. While the State, of course, has the power to anticipate evils or abuses, this power of anticipation must be premised upon actual conditions which give a reasonable basis for the apprehension and cannot be predicated upon "any fanciful conjecture." *Borden's Farm Products* v. *Baldwin*, 283 U. S. 194.

It is submitted further that Section 7 would burden unions out of all proportions to any public benefit that Section 7 might bestow. Under Section 7 extremely detailed and complicated financial accounts are required to be rendered to the State, including itemization of all receipts and of each and every disbursement with date, purpose and amount thereof and name of each recipient.[12] Such a statement far exceeds that required of insurance companies or utilities or any other form of business enterprise operating in the State. In order to be assured that they would not be penalized in the sum of $1,000 for a possible violation of Section 7 (as set forth under Section 18), it would be necessary for each union, regardless of its size or finances, to hire, if not certified public accountants, at least persons with a better knowledge of accounting practices and procedures than that possessed by working men and women who, as in the large majority of cases, have, without compensation, assumed the job of president or secretary or treasurer of a local union in the past. The possibility of criminal penalties for fail-

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all officers and representatives of such labor organizations having anything to do with the finances of the organization are bonded. That all expenditures of any of the funds of any such labor organization are submitted to a vote of the membership for approval either before or after such expenditures are made."

[12] See Form of Report on R. 292.

ure to properly make the reports would operate and has operated to discourage many otherwise available workers from accepting union positions (R. 316).

It is to be noted that the State does not require that this extremely detailed financial report be submitted to members of labor organizations, who, as the persons directly involved and directly participating, presumably would be the persons most interested; instead, the information is to be made available only to the Governor. It may be inquired, just what compelling reasons are there for such a requirement? The State is not here dealing with an enterprise in which the public is solicited or is required to invest its funds; on the contrary, the State is dealing with a private, voluntary association whose internal affairs the courts have universally held to be the concern solely of its membership. See Dangel & Shriber, "Labor Unions", Section 280, p. 304. Not only does the record fail to show any occasion for departure from this established rule, but on the contrary the record shows affirmatively no possible basis for state intrusion in the manner here attempted.

C. Section 15

Similar considerations are applicable to Section 15 which proscribes the collecting or receiving by labor organizations of any fee or sum of money (other than initiation fees or dues) as a "work permit" (assuming this an identifiable term). The State can point to no prevailing abusive conditions in respect to the collection by unions of anything which could be classified as "work permits." On the contrary, the collection under certain conditions of sums of money, although not as initiation fees or dues, constitutes a practice traditionally adopted in union constitutions and by-laws and was shown by the evi-

dence to be indispensable to the proper functioning of labor organizations (R. 16, 20).

Section 15, it should be observed, constitutes a blanket and unconditional prohibition upon the collection of all fees which are not initiation fees or dues if employment is contingent upon the payment of such fees. Section 15 is not designed merely to prevent the fraudulent or arbitrary collection of fees or the collection of fees in excessive amount and without relation to any benefits received by the person paying the fee. It does not concern itself with the amount of the fee, or its purpose. It is not narrowly drawn to proscribe any particular abuse. It is a catch-all proscription.[13]

Such unconditional prohibition operates directly, and unequivocally, and entirely without reason, to outlaw the collection of fees other than dues or initiation fees in situations where, virtually since their organization 50 and even 80 years ago, labor organizations, particularly in the building and metal trades industries, have required working fees as a condition to employment under union shop agreements gained by such organizations—situations where the practice is not only a reasonable and necessary one in terms of the ability of the organization to function for the best interests of its members, but also in terms of benefit to the public. Thus, Section 15 makes it a crime for labor organizations to engage in such accepted and traditional practices as the following: The collection of nominal fees from non-member apprentices in return for which apprentices receive the guidance and teaching of the journeymen

[13] This is clear from the broad construction given the section by the Alabama Court (R. 349):

> "This section was directed towards the practice whereby a person seeking a job is required to obtain a permit or a certificate by the payment of a sum of money to some organization before being permitted to exercise his right to work."

members of the union with whom they are employed, and the protection of the collective bargaining agreement that has been obtained through the efforts and sacrifices of the journeymen members in whose trade they are apprenticing; the charging of fees to non-member temporary workers (who do not desire to join a union and pay its initiation fees) for permission, during the limited period in which they desire employment, to work under the highly beneficial terms of an all-union contract without assuming the obligations of union membership; and the requiring of the payment of a fee as a condition of working under an all-union contract in the case of a transfer from one local union to another during the period necessary for the local to investigate the record, the capacity and integrity of the person applying for the transfer before he is admitted to membership. No complaint has ever been directed against these particular practices, and they are accepted and recognized in every community where labor organizations function under union shop agreements. The practices are designed to protect the membership and the public at large from imposition, and to afford non-members the opportunity to work under and receive the full benefits of existing union shop agreements—agreements that have often been obtained only after years of sacrifice and struggle on the part of the union membership. To deprive labor organizations of the right to require the payment of reasonable fees in such circumstances could operate only to the detriment of the organization and of the public.

These requirements in respect to work permit fees are contained in union constitutions and by-laws and were mutually agreed to only after experience had demonstrated the wisdom and necessity for the inclusion of such provisions. It is impossible to conceive any rational basis whatsoever for the outlawing of such a reasonable requirement as is contained, for instance, in Section 46, par.

(c), of the constitution of petitioner, United Brotherhood of Carpenters & Joiners of America, under which constitution the petitioner Local Union #103 operates. Section 46(c) requires simply that:

> "A member who desires to work in another jurisdiction from which he would return home daily, or who does not desire to transfer his membership, shall, before going to work, secure a Working Permit in writing from the Local Union or District Council in whose jurisdiction he may go to work. He shall pay for such Working Permit a charge of not less than Seventy-five Cents (75¢) per month, and if less than two years a member he shall pay any difference in initiation fee, and shall be subject to all local assessment levied exclusively for direct trade purposes by and for the use of the Local Union or District Council." (R. 20, 71.)

The fee required under Section 46(c) is entirely reasonable. The section relates solely to the internal affairs of the Carpenters Union; it obviously works for the benefit of the members of the Carpenters Union, and can do no possible harm to the general public.

The Supreme Court of Alabama has declared in the present case that in Alabama the constitutions, rules and by-laws of labor organizations "constitute not only the contract between the labor union and the members, but also the contract between the members and other members of the union" (R. 338). Article I, Section 10, of the Federal Constitution provides that no State shall pass any law impairing the obligation of contracts; this specific prohibition can be disregarded only when it is demonstrably required in the public interest. *Home Building & Loan Association* v. *Blaisdell*, 290 U. S. 398; *Treigle* v. *Acme Homestead Association*, 297 U. S. 189. In the latter case this Court pointed out that even though an activity might be such as materially to affect the public, for instance, as in the case of a public utility, or, as claimed by the Attorney General,

in respect to labor organizations, this afforded no basis for regulation which was not in fact for the benefit of the public and which was not in fact occasioned by public necessity. The Court stated, 297 U. S. at 197:

> "The appellee bases its entire argument in support of the challenged enactment upon the proposition that, as building and loan associations are incorporated for a quasi-public purpose, the state has a peculiar interest and a concomitant power of supervision and regulation to prevent injury and loss to their members; and it is said that this court affirmed the principle in Hopkins Federal Sav. & L. Asso. v. Cleary [296 U. S. 315, ante, 251, 56 S. Ct. 235, 100 A.L.R. 1403]. We have no disposition to qualify what was there said. We recognize that these associations, like banks and public service companies, are subject to a degree of regulation which would be unnecessary and unreasonable in the case of a purely private corporation. But laws touching building and loan associations, like those affecting banks or utility companies, must be confined to purposes reasonably connected with the public interest as distinguished from purely private rights. The legislature has no greater power to interfere with the private contracts of such corporations, or the vested rights of their stockholders as such, under the pretext of public necessity, than it would have to attempt the same ends in the case of a private corporation. Though the obligations of contracts must yield to a proper exercise of the police power, and vested rights cannot inhibit the proper exertion of the power, it must be exercised for an end which is in fact public and the means adopted must be reasonably adapted to the accomplishment of that end and must not be arbitrary or oppressive."

Section 15, as well as Section 16 next discussed, deals only with private rights; the requirements of these sections can find no basis in public necessity and afford no public benefit. Surely, it is unreasonable in the ex-

treme to invalidate obligations such as are contained in 46(c) of the constitution of the Carpenters Union, to nullify the obligations of union shop agreements, and to outlaw traditional union practices, by imposing blanket prohibitions against the collection of any and all fees which might come under the general category of "work permit" fees, as is done by Section 15. Since the State cannot and does not attempt to point to any abusive conditions as justification for the prohibition contained in Section 15, it is submitted that there is no public interest to be served by the blanket prohibition of the collection of any and all work permit fees that is in any way commensurate with the harm done to labor organizations in outlawing these traditional practices concerning which there has been no complaint, and that such prohibition contained in Section 15, striking down such traditional practices, arbitrarily deprives of rights of liberty and property in violation of the Fourteenth Amendment, and of existing contract rights in violation of Article I, Section 10, of the Constitution.

D. Section 16

Finally, in respect to Section 16 there is likewise a complete lack of rational basis for the prohibition against so-called "supervisory" or "administrative" employees (assuming these are identifiable classes) joining labor organizations which likewise take into membership non-supervisory or non-administrative employees, or for the prohibition against such labor organizations taking into membership such employees. Here again, as in respect to Section 15, the State has imposed a flat and unconditional proscription applicable under any and all circumstances to any and all categories of supervisory or administrative employees, at least in so far as they might wish to join any labor organization affiliated with the American Federation of Labor or the Congress of Industrial Organizations.

The State can point to no abusive conditions which have arisen because of the fact that supervisory or administrative employees are members of labor organizations, and the evidence affirmatively shows that such practice has resulted in no harm to the public, but that, on the contrary, such practice is necessary to the proper functioning of labor organizations within the State (R. 22, 302).

Even if we were to venture into the realm of speculation, any harm or abuse that might arise from the traditional practice of accepting certain classes of supervisory employees into membership could reasonably involve only a single class—that of employers—and not the public generally. Assuming that the employers were adversely affected by the practice (the record indicates to the contrary (R. 240)), the State could not, consistent with the equal protection of the laws clause of the Fourteenth Amendment, interpose itself solely on their behalf in the absence of a showing that the public generally was also adversely affected. It is submitted that any disabilities which might be suffered by employers because of the practice are more than outweighed by the disabilities which would be suffered by supervisory or administrative employees if they were denied the right to continue membership in labor organizations, or if labor organizations were denied the right to continue to include supervisory employees as members. (See R. 241.)

Petitioners have introduced as part of the record a recent bulletin prepared by the Bureau of Labor Statistics of the United States Department of Labor (R. 269), which describes the long history and practice on the part of labor organizations, particularly in the printing, building and metal trades, to include in membership certain classes of supervisory employees, the reasons for such practice, and the effect of such practice on industry generally (R. 269). This survey, together with the testimony of witnesses

familiar with conditions within the State of Alabama (R. 240), indicates conclusively that the practice is a traditional and well established one, that there have been few, if any, complaints concerning the practice, that the practice is of benefit to supervisory employees, union membership generally, and the general public, and that the practice has increased in recent years, with no resulting harm either to management or to the public. This study and the testimony shows that there are some 29 large International Unions whose constitutions permit, and in some cases require, membership of foremen in the same unions as production workers, and that this practice has been in effect since 1889.[14]

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[14] Since the printing trades has perhaps the longest history of including both foremen and production workers in the same organization, the report of the Bureau of Labor Statistics in regard to this industry is of particular significance. The report states:

"In both newspaper and book and job printing, which membership of foremen under the closed-shop agreements, has been required since 1889. The practice is so thoroughly established that it now appears to be accepted as a matter of course. Contracts provide wage scales for foremen, and include foremen under other provisions. Foremen continue to have a voice and vote in the union, although they tend to become inactive members. Recent studies reveal:

"'In early years, many publishers were strongly opposed to having their representatives owe allegiance to the union. As contracts became more inclusive, however, and rights of both employers and unions more clearly defined, publishers in general ceased to object. They are now chiefly concerned lest foremen should be subject to union discipline for differing with the local union in the interpretation of the terms of a contract. The internationals generally recognize the justice of the publishers' position and a method is provided for the joint settlement of such disputes. The unions do not, however, forego their right to discipline foremen for their disobeying laws relating to internal union matters, or for deliberately disregarding union rules. Although there is still occasional complaint that some locals attempt, by disciplining foremen, to enforce conditions not provided for in contracts, the practice is not so common as to constitute a major issue . . .

"'The foremen represents the employer in dealing with grievances arising in his department. He settles many day-to-day grievances

Surely, the prohibition against supervisory employees joining, or being accepted into membership by, labor organizations whose constitutions require or permit such class of employees to become members, such as, for instance, petitioner Brotherhood of Carpenters (R. 66), is an arbitrary destruction of the obligations of existing agreements contrary to Article I, Section 10, of the Federal Constitution, and surely the attempt to prescribe what persons shall or shall not be eligible to membership is an arbitrary interference with the internal affairs of a voluntary association. Labor associations, as voluntary associations, should be permitted to determine for themselves, unless there are very compelling reasons to the contrary, whether the purposes of their organization can best be accomplished by admitting or denying various classes of supervisory employees membership. For all that the State has submitted in support of the prohibition of Section 15, the State might as well undertake to limit membership in scientific societies by reference to the degree of education achieved, in political groups by reference to the degree of participation in particular elec-

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and complaints with the chapel, (local) chairman, without recourse to the joint standing committee or to arbitration.

"'In book and job printing the union membership of foremen is so thoroughly established that it does not become an issue except occasionally in a newly organized plant. It is clearly recognized that the foreman's first responsibility is to management.

"'His duty to the union is to administer the agreement fairly in the plant. There are advantages in this system in that the foreman, necessarily a skilled man himself, is thoroughly acquainted with the problems of the men and with the union agreement and rules. He is in good position, therefore, to interpret the union's position to management, and vice versa. However, the fact that he may be disciplined by the union, if the union considers that he has violated the agreement or a union rule is a source of difficulty in some cases. Fear of union discipline sometimes interferes with a foreman's efficiency, although the strong foreman is little affected. There is in some cases a need for more thorough protection of foremen from union discipline for carrying out office orders, pending determination of an issue through the negotiation or arbitration machinery.'"

tion campaigns, or in employer associations by reference to membership in the National Association of Manufacturers. Indeed, there would be little or no limit to the extent to which the State could interject itself into the internal affairs of voluntary associations and to deprive such voluntary associations of the most fundamental of their rights—that of determining which persons will or will not be taken into membership.

It is an equally arbitrary interference with the liberties of individuals to deny supervisory employees the right to join labor organizations of their own choosing. As well might the State undertake to tell persons of a certain religious belief that they cannot join the American Legion, or persons of a particular political belief that they cannot join a scientific society. Unless there exists some specific indication that the traditional practice of permitting supervisory or administrative employees to join labor organizations has resulted in any detriment to the public, or could possibly result in any detriment to the public, it is submitted that the prohibition against such practice is unreasonable and without rational basis, and is accordingly in violation of the Fourteenth Amendment.

IV

SECTIONS 7, 15 and 16 DENY PETITIONER EQUAL PROTECTION OF THE LAWS IN VIOLATION OF THE FOURTEENTH AMENDMENT.

The Bradford Act is directed at one segment of the general public, namely, members of labor organizations. The declaration of policy states that "the activities of labor organizations affect the social and economic conditions of the State and the welfare of its citizens." The purpose of the Bradford Act in so far as Sections 7, 15 and 16 are concerned is stated in such declaration of pol-

icy to be "to regulate the activities and affairs of labor organizations, their officers, agents, and other representatives in the manner and to the extent hereinafter provided."

By means of an exception inserted in the definition of "labor organizations" in Section 2 of the Act, there is excepted from the general class of labor organizations "any labor organization or labor union the members of which are subject to the Act of Congress known as the Railway Labor Act."

It is asserted by petitioners, and particularly petitioner Local Union #103, that Sections 7, 15 and 16, applicable as they are only to one class of voluntary associations, are discriminatory, and further, that such section, applicable only to petitioners and not to other classes of similarly situated labor organizations, deny such petitioners equal protection of the laws.

In making classifications and imposing limitations upon particular groups, the Fourteenth Amendment requires that the State act on the basis of a reasonable relationship to the object sought and not on the basis of any arbitrary and unreasonable classification, and all within a class must be treated equally. *Frost* v. *Corporation Commission*, 278 U. S. 515; *Southern Railway* v. *Green*, 216 U. S. 400. As in the case of all challenges to the exercise by the State of its police power, the sole question which concerns this Court is whether there is any rational basis for the challenged classification. Here again, the test is an eminently practical one, and the determination can be made only by factual appraisal of existing economic circumstances and conditions, with particular regard to the relevance of the exclusion to the objectives sought. See *Borden Farm Products* v. *Baldwin*, supra; *United States* v. *Carolene Products Co.*, 304 U. S. 144.

In so far as Section 7 is concerned, it is subject to the general objection that it discriminates as between labor organizations and all other types of enterprise in general and employer or trade associations in particular. Business corporations or public utilities chartered and licensed by the State are not required to make equivalent detailed financial disclosures, although the public is invited to invest its funds in such organizations and not in labor organizations. It can be inquired what is there in the nature of labor organizations that requires the elaborate disclosures provided for under Section 7. If, as asserted by the Alabama Supreme Court, the fact that labor organizations extend throughout a large body of the economic life of the State constitutes a reason for requiring such detailed accounting from them, then the operations of the public utilities or the great business corporations or the American Legion or the Farmers Grange or of organized religion or of political organizations, all of which extend into and affect every branch of public life, should likewise be required to file similar reports.

It can be further objected that labor associations are subjected to regulation while employer associations and their agents, which associations are set up and established and function for the same purpose of representation on behalf of employers as labor organizations function on behalf of employees, are not licensed and required to file financial statements. Labor organizations on the one hand and employer associations on the other hand are parties to an economic struggle for a fair share of the joint product of capital and labor; these parties are in continuous relationship of either opposition or conciliation in the same field of industrial relationships. Why should not both parties to this economic struggle be treated alike?

More strikingly discriminatory, however, is the fact that Section 7, as well as Sections 15 and 16, are applicable only

to one class of labor organization—namely, labor organizations whose members are not subject to the Railway Labor Act. The exclusion of labor organizations subject to the Railway Labor Act from the requirements of Sections 7, 15, and 16 is manifestly contrary to the principle that all within the class against which any particular legislation is directed must be treated alike.

Bearing in mind the purposes of Sections 7, 15 and 16, what rational basis is there for the exclusion by the State of Alabama of all unions subject to the Railway Labor Act? The fact that the excluded class of labor organizations are subject to a particular Act of Congress, and the included organizations are not, does, of course, constitute a difference between labor oragnizations within the class of labor organizations generally. But, as stated by this Court in *Frost* v. *Corporation Commission*, supra:

> "• • • Mere difference is not enough, the attempted classification 'must always rest upon some difference which bears a reasonable and just relation to the act with respect to which the classification is proposed, and can never be made arbitrarily and without any such basis', • • •"

This difference of inclusion and non-inclusion under the Railway Labor Act is the sole basis relied upon by the Alabama Supreme Court in determining that there was no denial of the equal protection of the laws. Such difference can, however, afford no basis for the exclusion for the simple reason that inclusion of labor organizations under the Railway Labor Act has absolutely no relevance to the attempted exemption, the inclusion accomplishing none of the purposes or objectives of Section 7, 15 or 16. The field of employee relationships regulated and dealt with under the Railway Labor Act is not the same field at all that is regulated and dealt with under the Alabama Act;

Sections 7, 15 and 16 of the Alabama Act deal with subjects which are in no way touched upon by the Railway Labor Act. The Railway Labor Act does not attempt or purport to regulate the internal operations of railway labor organizations; the Act merely imposes certain restrictions upon employer activity, provides for the establishment of collective bargaining units, and fosters collective bargaining relationships in a manner similar to that done by the National Labor Relations Act in the non-railroad interstate commerce field.[15] The Railway Labor Act does not require the filing of detailed financial statements or any other species of accounting by labor organizations subject to the Act. It does not forbid labor organizations subject to the Act to require or collect money in connection with any type of "work permit". It does not prevent any category of administrative or supervisory employee from becoming members in or being accepted for membership by any labor organization subject to the Act.[16] Thus, there would have been equal relevance for the State of Alabama to have excluded all labor organizations subject to the National Labor Relations Act; amenability to the provisions of either the National Labor Relations Act or the Railway Labor Act would not have accomplished what the Alabama Legislature sought to accomplish under the Bradford Act generally or under Sections 7, 15 and 16 thereof.

The only other possible basis for the exclusion of unions subject to the Railway Labor Act is that their internal operations in respect to the practices touched upon by Sections 7, 15 and 16 are in some manner or other dif-

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[15] For this very reason the National Labor Relations Act exempts persons subject to the Railway Labor Act (Sec. 2(2)).

[16] As a matter of fact, as disclosed by the record (R. 274), there is an extensive organization of railway supervisory personnel in the railroad industry (R. 243, 274).

ferent from those of other labor organizations—that they somehow function differently from all other classes of labor organizations as respects the proscribed practices. Whether any such difference exists is a matter for factual determination and is subject to evidentiary proof. Common knowledge and the showing made in the record in this case indicate conclusively that no such difference does in fact exist. The record shows (R. 2) that

> "Local No. 103 and the Alabama State Federation of Labor are not subject to the act of Congress known as the 'Railway Labor Act', but a large number of labor organizations which are subject to said act of Congress known as the railway labor act, were at the time Act No. 298 hereinafter referred to was allegedly adopted and allegedly approved, and are now, operating as labor organizations in the State of Alabama in precisely the same way as the trade and craft labor organizations affiliated with the Alabama State Federation of Labor, and in precisely the same way as said Local No. 103."

The record further shows (R. 232-3) that

> "At all times mentioned in the complaint, the Order of Railway Conductors, the Brotherhood of Locomotive Engineers, the Brotherhood of Enginemen and Firemen, the Brotherhood of Railway Trainmen were and are now, voluntary, unincorporated associations of employees of common carriers and corporations engaged in the transportation by rail of persons, baggage and other articles in all states of the United States, including the State of Alabama. Said common carriers are subject to the provisions of the Railway Labor Act. Said organizations have a membership of many thousands of persons throughout the United States, a large portion of which membership, in excess of 12,000, reside in and are residents of the State of Alabama. Its members are organized into autonomous subdivisions known as local unions, a large number

of which are located in the State of Alabama. Said organizations just named are not affiliated with the American Federation of Labor, nor are they affiliated with the Alabama State Federation of Labor, and are not affected in any way by said Act No. 298 above referred to. The local unions of the four orders named are conducted and operated in precisely the same manner as Local No. 103. Each of said national organizations is operated in precisely the same way as the United Brotherhood of Carpenters and Joiners of America.

"At all times mentioned in the complaint local labor organizations of the railway clerks, local labor organizations of the railway telegraphers, local labor organizations of the railway boilermakers, local labor organizations of the railway sheet metal workers, local labor organizations of the railway electricians, local labor organizations of the railway blacksmiths, local labor organizations of the railway machinists, local labor organizations of the railway maintenance men, local labor organizations of the Pullman Porters, were and are now unincorporated associations of employees of common carriers and corporations engaged in the transportation by railroad of persons, baggage and other articles in all states of the United States, including the State of Alabama. Said organizations are affiliated with the American Federation of Labor, but membership in said organizations is composed of or restricted to employees of common carriers. Said common carriers are subject to the provisions of the Railway Labor Act. Said organizations have a membership of many thousands of persons throughout the United States, a large portion of which, in excess of 12,000, reside in and are residents of the State of Alabama. Said local organizations affiliated with national organizations have jurisdiction over the particular trade or craft, all of which are organized and operated precisely along the same line as the United Brotherhood of Carpenters and Joiners of America, and said local labor organizations of said crafts and

trades affiliated with the Alabama State Federation of Labor and the American Federation of Labor are organized in precisely the same way and operated in precisely the same manner as the trade, craft and industrial organizations affiliated with the Alabama State Federation of Labor whose membership is not composed of the employees of common carriers."

There are seven standard craft international unions affiliated with the American Federation of Labor, such as the International Association of Machinists and the International Brotherhood of Boiler Makers, Iron Ship Builders and Helpers of America, and others mentioned in the above paragraph, which are associated together in the Railway Employees Department, a department of the American Federation of Labor similar to the Metal Trades or Building Trades Departments. These organizations are members of the Railway Employees Department because they have members employed by the railroads. To the extent that they have such members employed by the railroads, they are, of course, subject to the Railway Labor Act. In addition to their locals of non-railroad employees, these organizations have affiliated with them local unions composed entirely of railroad employees, and have affiliated with them other local unions called "mixed locals" which are composed partly of railroad employees and partly of non-railroad employees in the particular craft. All of such locals, however, as affiliates of the same Internationals, operate under identical constitutions and, as is obviously true in the case of mixed locals, function identically both as regards internal affairs and in terms of their relationship to the public generally. However, under the exemption of railway labor organizations, one local of the same international union can freely admit supervisory employees to membership, can freely require work permits in certain situations, and can freely operate without making

the detailed financial disclosures required under Section 7, while another local cannot. A member of the same international organization is relieved of the necessity of paying a work permit fee during the period his standing is being investigated when he transfers from a railroad local into a non-railroad local, but that same member is subject to such obligation under the constitution of his international union when he transfers from a non-railroad local to a railroad local. Is there any possible basis in reason or in any ascertainable facts for the exclusion of unions whose members are employed in the railroad industry from the requirements of Sections 7, 15 and 16? It is respectfully submitted that there is not, but that, on the contrary, such exemption, viewed in the light of the proven facts and in the light of common knowledge, must be regarded as arbitrary, unreasonable and without any more rational basis than there would be for the exclusion of labor organizations whose employees were subject to various state health laws, or were subject to various state or federal social security laws or to any other of a great variety of laws which do not touch upon the matters dealt with in Sections 7, 15 and 16.

A case very much in point is that of *Davidow* v. *Wadsworth Mfg. Co.* (Mich.), 178 N. W. 776, 12 A. L. R. 605, in which the Court stated as follows:

> "We call attention to the case of *Cleveland C. C. & St. L. R. Co.* v. *Schüler* (1914), 182 Ind. 57, L. R. A. 1915A, 884, 105 N. E. 567, the headnote of which reads as follows: 'While railroads may be placed in a class to themselves for some legislative purposes, such classification, to be valid, must be for purposes that have to do with duties peculiar to them as carriers, or with dangers peculiar to their operation.'
>
> "It was there held that a statute requiring railroad companies to pay any employee in full within seventy-

two hours after he had been discharged, or had voluntarily quit the service, and providing certain penalties, was unjustly discriminatory, and in violation of the State Constitution, since the classification made was arbitrary and without any valid reason for its basis. The court there said: 'It is true, as appellant concedes, that railroads may be placed in a class by themselves for some legislative purposes, but only for such purposes as have to do with duties peculiar to them as carriers or with the dangers peculiar to their operation. The rule is thus stated in *Bedford Quarries Co.* v. *Bough* (1907), 168 Ind. 671, 674, 14 L. R. A. (N. S.) 418, 80 N. E. 529; "The Legislature may make a classification for legislative purposes, but it must have some reasonable basis upon which to stand. It is evident that differences which would serve for a classification for some purposes would furnish no reason for a classification for legislative purposes. Such legislation must not only operate equally upon all within the class, but the classification must furnish a reason for, and justify the making of, the class; that is, the reason for the classification must inhere in the subject matter, and rest upon some reason which is natural and substantial, and not artificial. Not only must the classification treat all brought under its influence alike, under the same conditions, but it must embrace all within the class to which it is naturally related. Neither mere isolation nor arbitrary selection is a proper classification." ' "

The case of *Southern Railway* v. *Green, supra*, is also applicable. This Court held in that case as follows:

"It is averred in the complaint, and must be taken as admitted, that there are other corporations of a domestic character in Alabama carrying on the railroad business in precisely the same way as the plaintiff. It would be a fanciful distinction to say that there is any real difference in the burden imposed because the one is taxed for the privilege of a foreign corporation to do business in the State and the other for the

right to be a corporation. The fact is that both corporations do the same business in character and kind, and under the statute in question a foreign corporation may be taxed many thousands of dollars for the privilege of doing, within the State, exactly the same business as the domestic corporation is permitted to do by a tax upon its privilege, amounting to only a few hundred dollars. We hold, therefore, that to tax the foreign corporation for carrying on business under the circumstances shown, by a different and much more onerous rule than is used in taxing domestic corporations for the same privilege, is a denial of the equal protection of the laws, and the plaintiff being in position to invoke the protection of the Fourteenth Amendment, that such attempted taxation under a statue of the State, does violence to the Federal Constitution."

Sections 7, 15 and 16 cannot be saved by striking that portion of Section 2 exempting unions of railroad employees under the provisions of the saving clause (Sec. 21). To eliminate Section 2 would be to extend the scope of the law to embrace a class of labor organizations which the Legislature, in passing the statute, had by its very terms expressly excluded and which it clearly did not intend to make subject to the requirements in question, and thus to disregard the rule that, where the excepting proviso is found unconstitutional, the substantive provisions which it qualifies cannot stand. The existence of a saving clause does not affect the rule. See *Connally* v. *Union Sewer Pipe Co.*, 184 U. S. 450, (reversed on other grounds in *Tigner* v. *Texas*, 310 U. S. 141); *Frost* v. *Corporation Commission, supra; Sprague* v. *Thompson*, 118 U. S. 90; *Guinn* v. *U. S.*, 238 U. S. 347; *Myers* v. *Anderson*, 238 U. S. 368; *Smith* v. *Cahoon*, 283 U. S. 553; *Wilkinson* v. *Stiles*, 200 Ala. 279, 76 So. 45, and *Hickey* v. *Leviton*, 190 Wis. 646, 48 A. L. R. 434.

V

SECTIONS 7 AND 16 DEPRIVE AND DENY PETITIONERS RIGHTS GRANTED AND PROTECTED UNDER THE WAGNER ACT IN VIOLATION OF ARTICLE VI OF THE UNITED STATES CONSTITUTION.

Sections 7 and 16 operate to impose restraints or conditions upon the exercise of rights unconditionally granted by the National Labor Relations Act (49 Stat. 449); as such they must be declared inoperative as being in conflict with Federal legislation in a field in which Congress has paramount authority under Article VI of the United States Constitution which declares that the Constitution and Laws of the United States are supreme.

Section 7, as we have seen, licenses or conditions the very right of individuals to form and join labor organizations, and the right of labor organizations to function in the interests of their members, including the right to engage in collective bargaining. Section 16 forbids certain classes of employees to join labor organizations. These are rights specifically and freely granted under Section 7 of the National Labor Relations Act, pursuant to a valid Congressional purpose of minimizing labor disturbances that might interfere with interstate commerce. As such, these rights must necessarily be exercised free from any restraint by the State; otherwise the broad Federal objective might be forestalled or nullified by State legislation. When Congress passes legislation in the effectuation of powers conferred upon it by the Constitution and in a field in which it has plenary power to assert the right to legislate, all State enactments inconsistent with the Federal legislative plan are superseded, and any State legislation which conflicts with the Federal legislation must fall. Const. Art. VI, cl. 2; *Gibbons* v. *Ogden*, 9 Wheat. (U. S.)

1; *Cooley* v. *Board of Wardens*, 12 How. (U. S.) 299; *Hines* v. *Davidowitz*, 312 U. S. 52; *McGoldrick* v. *Gulf Oil Corp.*, 309 U. S. 414.

Specifically, Section 7 of the National Labor Relations Act confers the right upon employees "to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection." In addition, Section 8(5) of that Act makes it an unfair labor practice for an employer to refuse to bargain collectively with the representatives of his employees. These rights are, of course, included among or as a part of the "functioning" of labor organizations foreclosed except upon conditions imposed by Section 7 of the Bradford Act. In *Allen-Bradley, etc.*, v. *Wisconsin Employment Relations Board*, 315 U. S. 740, this Court, in discussing a directive of the Wisconsin Employment Relations Board under the Wisconsin Labor Act, clearly indicated that "if the order • • • caused a forfeiture of collective bargaining rights, a distinctively different question would arise," and further indicated that the States cannot deal even with local problems in a manner which "impairs and dilutes, qualifies or in any respect subtracts from any of the rights guaranteed and protected by the Federal Act." Since non-compliance with the filing provisions of Section 7 results in a forfeiture of bargaining rights under the broad prohibition against "functioning," the State of Alabama has done precisely what was interdicted in the *Allen-Bradley* case. Federal rights established by act of Congress are not less subject to restriction by the State than are rights granted under the Federal Constitution; accordingly the following quotation from the decision in *Thomas* v. *Collins, supra*, is applicable:

> "If the exercise of the rights of free speech and free assembly cannot be made a crime, we do not think this

can be accomplished by the device of requiring previous registration as a condition for exercising them and making such a condition the foundation for restraining in advance their exercise and for imposing a penalty for violating such a restraining order."

If Section 7 be considered a licensing requirement, it likewise must be considered invalid; federally granted rights are not subject to license by the State. *International Text Book* v. *Pigg, supra; Follett* v. *McCormick, supra.*

Also in conflict with the National Labor Labor Relations Act is Section 16 of the Bradford Act which flatly prohibits any supervisory employee from exercising rights granted under the National Labor Relations Act. Section 7 of the National Labor Relations Act specifically gives all employees the right "to form, *join* or assist labor organizations." (Emphasis supplied.) The National Labor Relations Board has many times held that supervisory or administrative personnel are employees within the meaning of Section 2(3) of the National Labor Relations Act. *National Labor Relations Board* v. *American Potash & Chemical Co.*, 98 Fed. (2) 488; *National Labor Relations Board* v. *Luxuray, Inc.*, 123 Fed (2d) 106; *National Labor Relations Board* v. *Richter's Bakery*, 140 Fed. (2d) 870. See also *In the Matter of Soss Manufacturing Co.*, 56 N.L.R.B. No. 70. The fact that the Board, in some cases and in some industries, has excluded supervisory employees from appropriate collective bargaining units is immaterial. In doing so, the Board has acted pursuant to the discretion lodged in it under Section 9 of the National Labor Relations Act. Such discretion has not been lodged in the State of Alabama or in any other State. Accordingly, the State cannot undertake to make laws in this respect either as complementary to the Federal law (*Missouri Pacific R. R. Co.* v. *Porter*, 273 U. S. 431, at 435) or in pur-

ported help or aid of the Federal law (*Charleston & Western R. R. Co.* v. *Varnville Co.*, 273 U. S. 597, at 604).

Similarly, Section 16, by denying labor organizations the right to take into membership supervisory employees, operates to deny labor organizations and their members the right granted under Section 7 of the National Labor Relations Act "to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection." The National Labor Relations Board has certified as collective bargaining representatives countless labor organizations taking into membership both supervisory and non-supervisory employees. The inclusion of both classes of employees had been found appropriate for purposes of collective bargaining and was necessary for purposes of engaging in concerted activities for mutual aid or protection. It is in direct contravention of the policy of the National Labor Relations Act, as set forth in Section 1 thereof, thus to dilute the bargaining power which it was the purpose of the National Labor Relations Act to strengthen so that inequalities of bargaining power which in the past had resulted in industrial unrest could be eliminated.

It is respectfully submitted that Sections 7 and 16 impair rights unconditionally granted under the National Labor Relations Act, and to the extent of such impairment operate to frustrate the effectuation of a valid Federal purpose. As such they must be declared inoperative as contrary to the provisions of Article VI of the Constitution making the laws of the United States supreme.

VI

SECTIONS 15 AND 16 ARE SO AMBIGUOUS AS TO DENY DUE PROCESS OF LAW

Sections 15 and 16 subject persons engaging in customary and usual practices—practices not constituting crimes under the common law—to fine and imprisonment. While

the State may thus create crimes, it is incumbent upon it to be sufficiently explicit so as to inform what conduct on the individual's part will render him liable to criminal penalties. A statute, and particularly a criminal statute, which is so vague, indefinite and uncertain as to its meaning that the things and matters prohibited and its application to particular persons are not reasonably ascertainable, is void under the due process clause of the Fourteenth Amendment. *Lanzetta* v. *New Jersey*, 306 U. S. 451; *United States* v. *Reese*, 92 U. S. 214, 23 L. Ed. 563; *United States* v. *Cohen Grocery Co.*, 255 U. S. 81, 85 L. Ed. 516.

Section 15 makes it a crime for a union or its representative to receive any sum (not constituting initiation fees or dues) as a "work permit." What is a "work permit"? No definition of the term is attempted in the Act, and it is submitted that the term has not achieved such a meaning in common parlance as to indicate clearly and unequivocally to the average citizen just what is intended. Do the traditional practices discussed under Part IV of this brief constitute the exaction of a "work permit" fee, and is it the intention of the Legislature to outlaw them? The Alabama Supreme Court declines to pass upon this specific question and states that it will determine whether any particular practice comes within the term "work permit" when and if the case is presented, but at the same time, the Court declares that the term "work permit" is not ambiguous. Thus, the State Court requires that citizens speculate as to whether any particular practice does or does not come within the prohibition of the law. Persons of common intelligence cannot be expected to know precisely what is meant by the term "work permit." Obviously, labor organizations and their members are obliged to guess as to which of their established practices now constitute crimes in violation of Section 15.

Similarly with the use of the terms "executive," "administrative," "professional," or "supervisory" in Section 16 forbidding employees of those categories to join or be accepted as members by labor organizations. Again, no definitions of these terms are set forth in the Act. The National Labor Relations Board, in its nine years of history, has been able to evolve no satisfactory definition of what constitutes a "supervisory employee," but depends upon the record made before it in each particular case. The categories of possible supervisory or administrative employees are endless. For instance, in a recent case before the National Labor Relations Board, involving all employees of the Western Union Telegraph Company (*In the Matter of Western Union Telegraph Company*, 58 N. L. R. B. No. 233), some twelve weeks and approximately 10,000 pages of record were required to determine which of some two hundred categories of disputed employees were to be excluded from a proposed nation-wide bargaining unit as "supervisory" employees. In Alabama apparently these employees would be required to determine for themselves, under penalty of criminal prosecution, whether they could or could not belong to a union, this without the benefits of any standards or guides whatsoever.

Is it possible for a clerk having two subordinates working alongside of him to determine whether he is a supervisory or an administrative employee? Or for a "lead man" in a machinists' shop? Cf. *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72. Just where is the supervisory line to be drawn? Assuredly, men of ordinary intelligence must guess, and at their peril, as to just what categories can be considered to be included in the broad terms "administrative" and "supervisory."

In *Lanzetta* v. *New Jersey, supra,* the Court stated:

> *"No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the state commands or forbids* • • •
>
> "That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties is a well-recognized requirement, consonant alike with ordinary notions of fair play, and the settled rules of law; *and a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law."* (Emphasis supplied.)

Nor can judicial construction undertake to limit the vagueness or generality of the statute:

> "The question, then, to be determined is, whether we can introduce words of limitation into a penal statute so as to make it specific, when, as expressed, it is general only. *It would certainly be dangerous if the Legislature could set a net large enough to catch all possible offenders and leave it to the Courts to step inside and say who could be rightfully detained and who should be set at large.* This would, to some extent, substitute the judicial for the legislative department of the Government. The Courts enforce the legislative will when ascertained, if within the constitutional grant of power • • • To limit this statute in the manner now asked for would be to make a new law, not to enforce an old one. This is no part of our duty." (*United States* v. *Reese*, 92 U. S. 214, 23 L. Ed. 563, at p. 221.) (Emphasis supplied.)

It is respectfully submitted that Sections 15 and 16 are ambiguous and not susceptible of any exact interpreta-

tion so as reasonably to inform the public of the nature of the practices which the State has declared to be criminal, and for that reason must be declared invalid as a denial of due process.

Conclusion

It is respectfully submitted that, under the decisions cited and discussed in the foregoing arguments, petitioners have been denied and deprived by Sections 7, 15 and 16 of the Alabama Act of rights granted and secured under the Constitution and Laws of the United States, and that the decision of the Alabama Supreme Court should be reversed.

Respectfully submitted,

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